

A G E N D A

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
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METRO

MEETING: METRO COUNCIL REGULAR MEETING
DATE: April 27, 1995
DAY: Thursday
TIME: 7:00 p.m.
PLACE: Council Chamber

******PLEASE NOTE: EVENING MEETING******

Approx. Time *			<u>Presenter</u>	<u>Lead Councilor</u>
7:00 PM		CALL TO ORDER AND ROLL CALL		
(5 min.)	1.	INTRODUCTIONS		
(5 min.)	2.	CITIZEN COMMUNICATIONS		
(5 min.)	3.	EXECUTIVE OFFICER COMMUNICATIONS		
	4.	CONSENT AGENDA		
7:15 PM (5 min.)	4.1	Consideration of Minutes of the April 18, 1995 Work Session and the April 20, 1995 Council Meeting.		
	5.	ORDINANCES: FIRST READINGS		
7:20 PM (10 min.)	5.1	Ordinance No. 95-601 , Amending Metro Code Chapter 2.08 Relating to the Office of General Counsel and Declaring an Emergency.	Burton	McFarland
	6.	ORDINANCES: SECOND READINGS		
7:30 PM (20 min.)	6.1	Ordinance No. 95-591 , Relating To Government Relations, Amending Chapter 2.11 of The Metro Code	Burton	Morissette
7:50 PM (20 min.)	6.2	Ordinance No. 95-600 , Amending the FY 1994-95 Budget and Appropriations Schedule by Transferring \$12,000 From Personal Services to Capital Outlay in the General Fund Executive Office; and Declaring an Emergency.	Burton	McCaig

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* All times listed on the agenda are approximate; items may not be considered in the exact order listed.

Approx.
Time *Presenter

8:10 PM (10 min.)	6.3	Ordinance No. 95-598 , Amending the FY 1994-95 Budget and Appropriations Schedule to Reflect Actual Election Costs of the November, 1994 Election For the Support Services Fund; and to Reflect Expected Election Costs of the May, 1995 Election Appropriated in the General Fund; And Declaring an Emergency.	Sims	McCaig
8:20 PM (10 min.)	6.4	Ordinance No. 95-599 , Amending the FY 1994-95 Budget and Appropriations Schedule to Reflect Operational Needs at Metro Washington Park Zoo; and Declaring an Emergency.	Kiaunis	Washington
8:30 PM (10 min.)	6.5	Ordinance No. 95-595 , Amending the FY 1994-95 Budget and Appropriations Schedule for the Purpose of Reflecting Funding Increases Due to Costs Associated With Household Hazardous Waste Events, Delivered Solid Waste Tonnage in Excess of Budget Expectations, and Transferring Appropriations Within the Solid Waste Revenue Fund and the Rehabilitation and Enhancement Fund; and Declaring an Emergency.	Burton Carter	Kvistad
	7.	RESOLUTIONS		
8:40 PM (5 min)	7.1	Resolution No. 95-2136 , For the Purpose of Confirming A Citizen Member Appointee to the Metro Policy Advisory Committee.	Burton	McLain
	8.	INFORMATIONAL ITEMS		
8:45 PM (15 min.)	8.1	General Update on Transit Oriented Development (TOD) Activities	Cotugno	Monroe
9:00 PM (10 min.)	9.	COUNCILOR COMMUNICATIONS		
9:10 PM (10 min.)	10.	LEGISLATIVE ITEMS		
9:20 PM		ADJOURN		

* All times listed on the agenda are approximate; items may not be considered in the exact order listed.

AGENDA ITEM 5.1

Meeting Date: Thursday, April 27, 1995

ORDINANCE NO. 95-601

FIRST READING: NO ACTION TO BE TAKEN

**Amending Metro Code Chapter 2.08 Relating to the Office of General Counsel and Declaring an
Emergency.**

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING METRO CODE)	ORDINANCE NO. 95-601
CHAPTER 2.08 RELATING TO THE)	
OFFICE OF GENERAL COUNSEL AND)	Introduced by Mike Burton,
DECLARING AN EMERGENCY)	Executive Officer, and
)	J. Ruth McFarland, Presiding
)	Officer

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Metro Code Chapter 2.08 is amended to read as follows:

OFFICE OF GENERAL COUNSEL

SECTIONS:

2.08.010	Purpose
2.08.020	General Counsel Office Created
2.08.030	Powers
2.08.040	Duties
2.08.050	Records
2.08.060	Attorney-Client Relationship
2.08.070	Employment of Outside Counsel
2.08.080	Opinions {Regarding Division of Powers}

2.08.010 Purpose: The purpose of this chapter is to establish an Office of General Counsel to provide legal services to Metro. ~~{the District and its Council, Executive Officer, and any commissions}.~~

2.08.020 General Counsel Office Created: There is hereby created an Office of General Counsel consisting of the General Counsel and such subordinate employees as the Council may provide. ~~{The General Counsel and any subordinate employees shall be employed by the District subject to Personnel Rules adopted by the Council.}~~ Subordinate attorneys shall serve at the pleasure of the General Counsel. The General Counsel shall be appointed by Executive Officer subject to the confirmation of a majority of the members of the Council. The General Counsel may be removed by the Executive Officer or by a vote of a majority of the members of the Council. ~~{The Office of General Counsel is not a department of the District.}~~ In the event the Executive Officer removes the General Counsel, the Executive Officer shall report the occurrence to the Council at the next regularly scheduled Council

meeting. A decision to remove the General Counsel shall not be subject to review by any court or tribunal.

2.08.030 Powers: The General Counsel shall have:

(a) General control and supervision of all civil actions and legal proceedings in which the District may be a party or may be interested.

(b) Full charge and control of all the legal business of all departments and commissions of the District, or of any office thereof, which requires the services of an attorney or counsel in order to protect the interests of the District. No District officer, board, Council, commission, or department shall employ or be represented by any other counsel or attorney at law except as may be provided for in this chapter.

2.08.040 Duties: The General Counsel shall have the following duties:

(a) Give legal advice and opinions orally and in writing and prepare documents and ordinances concerning any matter in which the District is interested in when ~~required~~ requested by the Council, the Executive Officer, the Auditor or any Metro commission;

(b) Review and approve as to form all written contracts, ordinances, resolutions, executive orders, bonds, or other legally binding instruments of the District;

(c) Except as provided by any insurance policy obtained by the District appear for, represent, and defend the District, and its departments, officers, commissions and employees and other persons entitled to representation under the Oregon Tort Claims Act in all appropriate legal matters except legal matters involving persons who after investigation by the office of the General Counsel, are found by the General Counsel to have been acting outside the scope of their employment or duties or to have committed malfeasance in office or willful or wanton neglect of duty.

(d) Submit to the Council and Executive Officer, quarterly, a formal report of all suits or actions in which the District is a party. The report shall state the name of each pending suit or action and a brief description of the suit or action and the status of the suit or action at the date of the report. The report shall also state the name of each suit or action closed during the preceding calendar year and a brief description of the suit or action and the disposition of the suit or action including the amount of any money paid by the District. At any time the General Counsel shall at the request of the Council or the Executive report on the status of any or all matters being handled by the General Counsel.

(e) Appear, commence, prosecute, defend or appeal any action, suit, matter, cause or proceeding in any court or tribunal when ~~mutually~~ requested by the Executive Officer, ~~and~~ the Council or any Metro commission when, in the discretion of the General Counsel,

the same may be necessary or advisable to protect the interests of the District. ~~—[The General Counsel shall not appear on behalf of the District, without the mutual consent of the Executive Officer and Council as appropriate in any action, suit, matter, cause or proceeding in any court or tribunal.]~~

~~[The Executive Officer may authorize Metro's General Counsel to commence litigation or settlement for the collection of a continuously delinquent credit account more than forty five (45) days past due when litigation or settlement is advisable to protect the interests of the District. General Counsel shall report all collection litigation or settlement activities to the Executive Officer and Council at the earliest opportunity.]~~

2.08.050 Records:

(a) The General Counsel shall have charge and custody of the Office of General Counsel and of all legal papers pertaining thereto, which shall be arranged and indexed in such convenient and orderly manner as to be at all times readily accessible;

(b) The General Counsel shall keep in the office a complete docket and set of pleadings of all suits, actions, or proceedings in which the District, the Executive Officer, Council, or any Metro commission or employee thereof is a party, pending in any court or tribunal, unless the suits, actions, or proceedings are conducted by private legal counsel retained by the District in which case the General Counsel shall keep those records as the General Counsel deems advisable;

(c) The General Counsel shall keep and record all significant written opinions furnished to ~~[the District or to any department, the Executive Officer, Council or any]~~ Metro ~~[commission]~~ and shall keep an index thereof; and shall keep a ~~[chronological]~~ file including all opinions and correspondence of the office.

2.08.060 Attorney - Client Relationship: The relationship between the Office of General Counsel and ~~[the District]~~ Metro shall be an attorney-client relationship, with ~~[the District]~~ Metro being entitled to all benefits thereof. For the purpose of this chapter, Metro is recognized as a single entity whose elected officials and appointed commissioners collectively perform and exercise Metro's duties and authority. The General Counsel shall maintain a proper attorney - client relationship with the elected officials of the District so long as such officials are acting within the scope of their official powers, duties and responsibilities.

2.08.070 Employment of Outside Legal Counsel:

~~[(a) — Whenever the General Counsel concludes that it is inappropriate and contrary to the public interest for the Office of General Counsel to concurrently represent more than one Metro public officer in a particular matter or class of matters in circumstances which would create or tend to create a conflict of interest on the part of the General Counsel, the General Counsel may authorize one or both of such officers to employ its own counsel in the~~

~~particular matter or class of matters and in related matters. Such authorization may be terminated by the General Counsel whenever the General Counsel determines that separate representation is no longer appropriate;]~~

~~[(b)] When in the judgment of the General Counsel the General Counsel deems it necessary or appropriate to do so the General Counsel may [subject to budget and procedural requirements established by the Council] employ outside legal counsel on behalf of [any commission, the Council, the Executive Officer, or any] Metro [commission] to handle such matters as the General Counsel deems advisable. Employment of outside counsel is subject to the general requirements of this Code.~~

2.08.080 Opinions [Regarding Division of Powers]:

(a) The General Counsel shall prepare written opinions regarding interpretations of federal and Oregon law, the Metro Charter and Metro ordinances ~~[including but not limited to ORS Chapter 268 as provided for herein]~~. These ~~[(O)]~~ opinions ~~[prepared in conformance with this section]~~ shall be official guidance to the District except as superseded by courts of law, legislative action administrative rules, or actions of other superior tribunals or bodies.

~~[(b)] Neither the Executive Officer nor any member of the Council shall directly or indirectly by suggestion or otherwise, attempt to influence or coerce the General Counsel in the preparation of any requested opinion. The General Counsel shall not be removed because of the rendering of any opinion. Nothing in this section prohibits, however, the Executive Office or the Council from fully and freely discussing with the General Counsel the legal affairs of Metro.~~

~~[(b)]—Requests for opinions regarding interpretations of Oregon Law concerning the powers, duties, and authority of the Metro Council or the Metro Executive Officer as they relate to the division of powers, duties, and authorities, or jointly held powers, duties, and authorities, shall be made only by the Executive Officer, the Presiding Officer, chairs of standing Council Committees, Committees acting by resolution, or the Council acting by resolution.]~~

~~[(e)]—Prior to commencing to prepare any requested opinion subject to the provisions of paragraph (b) this section, the General Counsel shall refer the request to both the Executive Officer and the Council. The issuance of an opinion shall require the concurrence of both the Council and the Executive Officer in the question to be answered. Council concurrence shall be by resolution, except where an opinion request is originally approved by the Council and the Executive Officer concurs in the request. Executive Officer concurrence shall be in writing.]~~

~~[(d)]—In the event the Council and the Executive Officer fail to concur in a request for an opinion, either the Council or the Executive Officer may direct that the Office of General Counsel refer the question to outside legal counsel approved by the General Counsel~~

~~and the requestor of the opinion subject to the provisions of Metro Code Chapter 2.04 and available budget appropriations. In the event any requested opinion is rendered by outside counsel, it shall not be official guidance to the District but shall constitute legal advice to the requestor of the opinion only.]~~

~~[(e) Nothing contained herein shall restrict the Office of General Counsel from effectively advocating the legal interests of the District in appearing before courts or tribunals. Such advocacy shall be consistent with opinions rendered pursuant to this section but the advocacy efforts of attorneys for the District shall not constitute official guidance to the District.]~~

Section 2. This Ordinance being necessary for the health, safety, or welfare of the Metro area, for the reason that it is necessary to avoid additional expense and litigation, an emergency is declared to exist and the Ordinance takes effect upon passage.

ADOPTED by the Metro Council this _____ day of _____, 1995.

J. Ruth McFarland, Presiding Officer

ATTEST:

Recording Secretary

gl
1222

AGENDA ITEM 6.1
Meeting Date: Thursday, April 27, 1995

ORDINANCE NO. 95-591
SECOND READING: ACTION ITEM

Relating to Government Relations, Amending Chapter 2.11 of The Metro Code.

Note: The First Reading of this Ordinance was February 16, 1995

BEFORE THE METRO COUNCIL

AN ORDINANCE RELATING TO)	ORDINANCE NO. 95-591
GOVERNMENT RELATIONS, AMENDING)	
CHAPTER 2.11 OF THE METRO CODE)	Introduced by Mike Burton,
)	Executive Officer

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. The Metro Code Chapter 2.11 is amended to read as follows:

CHAPTER 2.11

~~OFFICE OF GOVERNMENT RELATIONS~~

SECTIONS:

~~2.11.010 Purpose~~
~~2.11.020 Government Relations Office Created~~
~~2.11.030 Duties~~
~~2.11.040 Advocate for District Policies~~
~~2.11.010 Legislative Representative~~

~~2.11.010 Purpose: The purpose of this Chapter is to establish an Office of Government Relations to provide government relations services to the District and its Council, Executive Officer and any Metro commissions.~~

~~2.11.020 Government Relations Office Created: There is hereby created an Office of Government Relations consisting of the Government Relations Officer and such subordinate employees as the Council may provide. The Government Relations Officer and any subordinate employees shall be employed by the District subject to Personnel Rules adopted by the Council. The Government Relations Officer shall be appointed by the Executive Officer subject to the confirmation of a majority of the members of the Council. The Government Relations Officer may be removed by the Executive Officer or by a vote of a majority of the members of the~~

~~Council. The Office of Government Relations is not a department of the District. All contracts authorized for Government Relations Services shall be managed through the Office of Governmental Relations.~~

2.11.030010 Duties Legislative Representative: ~~The Government Relations Officer~~ Legislative Representative shall be appointed by the Executive Officer, and subject to confirmation by the Council, shall have the following duties:

- (a) Responsibility for managing the District's State Legislative Program including:
 - (1) Assembling the District's legislative program for review and approval by the Council following a process established by the Council;
 - (2) Insure District representation before legislative committees with individual legislators both during a legislative session and in interim periods and with other interested persons;
 - (3) Development and implementation of a system to monitor and inform the Council and Executive Officer of District-related legislation; and
 - (4) Preparation of a final legislative report analyzing District-related legislation.
- (b) ~~(5)~~ (5) Responsibility for communicating District programs and policies to local, state and federal governmental officials, and task forces, commissions, and rule making bodies.
- (c) ~~(6)~~ (6) Responsibility to monitor and communicate to the Council and Executive Officer programs and policies of other governments and special interest groups which affect or impact functions or activities of the District.

~~2.11.040 Advocate for District Policies(d):~~ In carrying out the duties of the Office, the ~~Government Relations Officer or subordinate employees~~ The Legislative Representative of Metro shall not represent or advocate the position of any single Metro elected official or group of elected officials. ~~The Government Relations Officer or subordinate employees~~ A Legislative Representative shall advocate only on matters which have been approved or adopted by the Metro Council or any task force or committee authorized by the Council to represent the Council on legislative matters and which have been approved by the Executive Officer. For any matter in which the Council or any task force or committee authorized to represent the Council on legislative matters and the Executive Officer disagree, ~~the Government Relations Officer and subordinate employees~~ A Legislative Representative shall not represent or advocate for either the Metro Council or the Executive Officer.

ADOPTED by the Metro Council this ____ day of _____, 1995.

J. Ruth McFarland, Presiding Officer

ATTEST:

Recording Clerk

gl
1218

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 95-591, RELATING TO GOVERNMENT RELATIONS, AMENDING CHAPTER 2.11 OF THE METRO CODE

Date: February 6, 1995

Presented by:
Executive Officer Mike Burton

PROPOSED ACTION

This Ordinance would amend Chapter 2.11 of the Metro Code to eliminate the separate Office of Governmental Relations. The Ordinance continues the lobbyist function as a Legislative Representative appointed by the Executive Officer and confirmed by the Council. The Ordinance would leave unchanged the present provisions governing how the Metro lobbyist function is carried out with the mutual approval of matters by both the Council and Executive Officer.

FACTUAL BACKGROUND AND ANALYSIS

A merger of Public Affairs and Government Relations occurred July 1, 1994, reporting to both the Executive Officer and the Metro Council. The function of this Office is to build stronger relationships with local governments in the region, and increase Metro's visibility. The Department of Public and Government Relations also provides public and government relations services for all Metro departments, and acts as in-house public relations and government affairs agency for both the Executive Officer and the Metro Council.

These activities can best be managed with direct accountable oversight from the Executive office.

All legislative functions would continue to be a completely joint endeavor between the Council and the Executive. The Executive will take full responsibility for assuring the Council that Council public relations are appropriately and efficiently delivered.

This Ordinance will allow the Executive to streamline the functions of Metro, designate the Legislative Representative, subject to Council approval, and organize the governmental relations and public affairs functions of Metro as a department, with direct, ongoing accountability.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 95-591.

gl1923

AGENDA ITEM 6.2
Meeting Date: Thursday, April 27, 1995

ORDINANCE NO. 95-600
SECOND READING: ACTION ITEM

Amending the FY 1994-95 Budget and Appropriations Schedule by Transferring \$12,000 From Personal Services to Capital Outlay in the General Fund Executive Office; and Declaring an Emergency.

Note: The First Reading of this Ordinance was April 20, 1995

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 95-600 AMENDING THE FY 1994-95 BUDGET AND APPROPRIATIONS SCHEDULE BY TRANSFERRING \$12,000 FROM PERSONAL SERVICES TO CAPITAL OUTLAY IN THE GENERAL FUND EXECUTIVE OFFICE; AND DECLARING AN EMERGENCY.

Date: April 5, 1995

Presented by: Mike Burton

FACTUAL BACKGROUND AND ANALYSIS

Mike Burton was sworn in as Executive Officer of Metro on January 3, 1995. Effective that date, the budget provided for a staff reduction from 4 to 2. That resulted in a dollar reduction of \$79,062.

Executive Officer Burton's response to those budget constraints was to work within the existing funds.

Ordinance 95-584 was adopted by the Council on January 15, 1995 to allow the Executive Officer to create an additional position, but this position was funded within existing reduced resources.

In addition, office space and furniture were given to the newly elected Auditor and an Executive Management work station was given to the Office of Government and Public Relations.

Because of the significantly reduced Executive staff salaries and benefits, there will be unexpended funds in Personal Services. Effective July 1, 1995, the deleted position in the Executive Officer's budget will be restored. This position will require a work station and space.

The Executive Officer is requesting a transfer of \$12,000 from Personal Services to Capital to accommodate the needed space and to acquire the necessary work station and equipment. There is no budget impact. This is a transfer from Personal Services to Capital.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 95-600.

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY 1994-95)
BUDGET AND APPROPRIATIONS)
SCHEDULE BY TRANSFERRING \$12,000)
FROM PERSONAL SERVICES TO CAPITAL)
OUTLAY IN THE GENERAL FUND)
EXECUTIVE OFFICE; AND DECLARING AN)
EMERGENCY)

ORDINANCE NO. 95-600

Introduced by Mike Burton,
Executive Officer

WHEREAS, With the creation of the new Office of the Metro Auditor and the temporary reduction in the number of authorized positions for the Executive Office in FY 1994-95, office space previously used by the Executive Office was allocated to the Office of the Auditor, and

WHEREAS, The position temporarily removed from the Executive Office will be reinstituted starting July 1, 1995, and

WHEREAS, One workstation from the Executive Office was transferred to the Office of Public and Government Relations, and

WHEREAS, Construction of a new office, and provision of furniture and equipment for that office and other Executive Office offices are necessary for efficient operation, and

WHEREAS, A portion of the funds currently appropriated in the General Fund Executive Office Personal Services appropriation will not be expended, and

WHEREAS, The necessary construction and acquisition of furniture and equipment can be funded by the transfer of the projected savings from the Executive Office Personal Services category to Capital Outlay without increasing the Executive Office FY 1994-95 budget, and

WHEREAS, The Metro Council has reviewed and considered the need to transfer appropriations within the FY 1994-95 Budget; and

WHEREAS, The need for a transfer of appropriation has been justified; now,
therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS;

1. That the FY 1994-95 Budget and Schedule of Appropriations are hereby amended as shown in the column titled "Revision" of Exhibits A and B to this Ordinance to transfer \$12,000 within the General Fund Executive Office from Personal Services to Capital Outlay.

2. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this _____ day of _____, 1995.

ATTEST:

Recording Secretary

J. Ruth McFarland, Presiding Officer

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Exhibit A
Ordinance No. 95-600

FISCAL YEAR 1994-95		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
GENERAL FUND							
Executive Office							
<u>Personal Services</u>							
511110	ELECTED OFFICIALS	1.00	76,200	0	0	1.00	76,200
	Executive Officer						
511121	SALARIES-REGULAR EMPLOYEES (full time)	0.50	37,866	0	0	0.50	37,866
	Administrator	0.50	26,309	0	0	0.50	26,309
	Senior Administrative Services Analyst	0.50	13,834	0	0	0.50	13,834
	Administrative Support Assistant D						
511131	SALARIES-TEMPORARY EMPLOYEES (full time)	0.50	22,359	0	0	0.50	22,359
	Senior Administrative Services Analyst	0.50	13,549	0	0	0.50	13,549
	Administrative Support Assistant D						
511221	WAGES-REGULAR EMPLOYEES (full time)	1.00	26,918	0	0	1.00	26,918
	Administrative Support Assistant C		0	0	0		0
511400	OVERTIME		0		0		0
512000	FRINGE		126,821	0	(12,000)		114,821
	Total Personal Services	4.50	343,856	0	(12,000)	4.50	331,856
	Total Materials & Services		40,002				40,002
<u>Capital Outlay</u>							
571500	Purchases-Office Furniture & Equipment		1,600		12,000		13,600
	Total Capital Outlay		1,600		12,000		13,600
	TOTAL EXECUTIVE MANAGEMENT EXPENDITURES	4.50	385,458	0.00	0	4.50	385,458
	TOTAL GENERAL FUND EXPENDITURES	14.62	6,664,018	0.00	0	14.62	6,664,018

Exhibit B
Ordinance No. 95-600

FY 1994-95 SCHEDULE OF APPROPRIATIONS

	Current Appropriation	Revision	Proposed Appropriation
GENERAL FUND			
Council			888,891
Personal Services	888,891		102,243
Materials & Services	102,243		13,800
Capital Outlay	13,800		
	<u>1,004,934</u>	<u>0</u>	<u>1,004,934</u>
 Executive Office			
Personal Services	343,858	(12,000)	331,858
Materials & Services	40,002		40,002
Capital Outlay	1,600	12,000	13,600
	<u>385,458</u>	<u>0</u>	<u>385,458</u>
 Office of the Auditor			
Personal Services	76,373		76,373
Materials & Services	20,654		20,654
Capital Outlay	20,127		20,127
	<u>117,154</u>	<u>0</u>	<u>117,154</u>
 Special Appropriations			
Materials & Services	265,000		265,000
	<u>265,000</u>	<u>0</u>	<u>265,000</u>
 General Expenses			
Interfund Transfers	4,241,383		4,241,383
Contingency	450,089		450,089
	<u>4,691,472</u>	<u>0</u>	<u>4,691,472</u>
 Unappropriated Balance	200,000		200,000
Total Fund Requirements	<u>6,664,018</u>	<u>0</u>	<u>6,664,018</u>

4/5/95 5:25 PM

AGENDA ITEM 6.3
Meeting Date: Thursday, April 27, 1995

ORDINANCE NO. 95-598
SECOND READING: ACTION ITEM

Amending the FY 1994-95 Budget and Appropriations Schedule to Reflect Actual Election Costs of the November, 1994 Election For the Support Services Fund; and to Reflect Expected Election Costs of the May, 1995 Election Appropriated in the General Fund; and Declaring an Emergency.

Note: The First Reading of this Ordinance was April 20, 1995

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO 95-598 AMENDING THE FY 1994-95 BUDGET AND APPROPRIATIONS SCHEDULE TO REFLECT ACTUAL ELECTION COSTS OF THE NOVEMBER 1994 ELECTION FOR THE SUPPORT SERVICES FUND; AND TO REFLECT EXPECTED ELECTION COSTS OF THE MAY 1995 ELECTION APPROPRIATED IN THE GENERAL FUND; AND DECLARING AN EMERGENCY

Date: March 29, 1995

Presented by: Jennifer Sims

FACTUAL BACKGROUND AND ANALYSIS

Support Services Fund, Special Appropriation, Election Expense:

An adjustment to the Support Services Fund, Special Appropriation is necessary to fully fund the actual cost of the November 1994 election. The amount budgeted for that election is \$125,000. Attached as an exhibit to this staff report, is a copy of a memo dated March 23, 1995, reporting that the actual costs for that election were \$191,228. Since the actual cost were greater than the amount budgeted, an increase of \$66,229 in this appropriation is required. The additional funds will be transferred from Support Services Fund contingency.

General Fund, Special Appropriation, Election Expense:

An adjustment to the General Fund, Special Appropriation, Election Expense is necessary to fully fund the expected cost of the May 1995 Open Spaces Bond Measure election. The amount budgeted for that election is \$150,000. The attached memo presents a new estimate of the election costs of \$220,000. This higher cost is based on recent charges for the November 1994 election. An increase of \$70,000 in the Special Appropriation for the Open Spaces Bond Measure is requested. The additional funds will be transferred from General Fund contingency. This action is being requested now as the billing for this election will not be received until after the fiscal year end when it will be too late to adjust the appropriation level. The cost will be charged to FY 1994-95, the year the election was held.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 95-598.

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY 1994-95
BUDGET AND APPROPRIATIONS SCHEDULE TO
REFLECT ACTUAL ELECTION COSTS OF THE
NOVEMBER 1994 ELECTION APPROPRIATED
FOR THE SUPPORT SERVICES FUND; AND TO
REFLECT EXPECTED ELECTION COSTS OF
THE MAY 1995 ELECTION APPROPRIATED IN
THE GENERAL FUND; AND DECLARING AN
EMERGENCY)

ORDINANCE NO. 95-598

Introduced by Mike Burton
Executive Officer

WHEREAS, The Metro Council has reviewed and considered the need to transfer
appropriations with the FY 1994-95 Budget; and

WHEREAS, The need for a transfer of appropriation has been justified; and

WHEREAS, Adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS;

1. That the FY 1994-95 Budget and Schedule of Appropriations are hereby amended
as shown in the column titled "Revision" of Exhibits A and B to this Ordinance for the purpose
of transferring \$66,228 from the Support Services Fund Contingency to Support Services
Fund, Special Appropriation, Election Expense and transferring \$70,000 from the General
Fund Contingency to the General Fund, Special Appropriation, Election Expense.

2. This Ordinance being necessary for the immediate preservation of the public
health, safety and welfare, in order to meet obligations and comply with Oregon Budget Law,
an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this _____ day of _____, 1995.

ATTEST:

J. Ruth McFarland, Presiding Officer

Recording Secretary

Exhibit A
Ordinance No. 95-598
SUPPORT SERVICES FUND

FISCAL YEAR 1994-95		CURRENT BUDGET		REVISION	PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT		FTE	AMOUNT
Special Appropriation						
	<u>Materials & Services</u>					
528200	Election Expense		125,000	66,229		191,229
	TOTAL EXPENDITURES	0.00	125,000	0.00 66,229	0.00	191,229
General Expenses						
	Total Interfund Transfers		806,169	0		806,169
	<u>Contingency and Unappropriated Balance</u>					
599999	Contingency					
	• General		137,282	(66,229)		71,053
	• Builders License		62,987	0		62,987
	• Construction Services (Tri-Met Contract)		2,539	0		2,539
599990	Unappropriated Fund Balance-Contractors License					
	• Builders License		207,625	0		207,625
	• Capital Replacement Reserve		200,000	0		200,000
	Total Contingency and Unappropriated Balance		610,433	(66,229)		544,204
	TOTAL EXPENDITURES	81.50	7,668,704	0	81.50	7,668,704

Exhibit A
Ordinance No. 95-598
GENERAL FUND

FISCAL YEAR 1994-95		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
Special Appropriations							
	<u>Materials & Services</u>						
524190	Misc. Professional Services		115,000		0		115,000
528200	Election Expense		150,000		70,000		220,000
	Total Materials & Services		265,000		70,000		335,000
	TOTAL EXPENDITURES	0.00	265,000	0.00	70,000	0.00	335,000
General Expenses							
	Total Interfund Transfers		4,241,383		0		4,241,383
	<u>Contingency and Unappropriated Balance</u>						
599999	Contingency		450,089		(70,000)		380,089
599990	Unappropriated Fund Balance		200,000				200,000
	Total Contingency and Unappropriated Balance		650,089		(70,000)		580,089
	TOTAL EXPENDITURES	14.35	6,664,018	0.00	0	14.35	6,664,018

Exhibit B
Ordinance No. 95-598
FY 1994-95 SCHEDULE OF APPROPRIATIONS

	Current Appropriation	Revision	Proposed Appropriation
SUPPORT SERVICES FUND			
Finance and Management Information			
Personal Services	2,321,327	0	2,321,327
Materials & Services	480,250	0	480,250
Capital Outlay	21,130	0	21,130
Subtotal	2,822,707	0	2,822,707
General Services			
Personal Services	947,694	0	947,694
Materials & Services	740,912	0	740,912
Capital Outlay	10,960	0	10,960
Subtotal	1,699,566	0	1,699,566
Office of Personnel			
Personal Services	552,092	0	552,092
Materials & Services	53,710	0	53,710
Capital Outlay	0	0	0
Subtotal	605,802	0	605,802
Office of General Counsel			
Personal Services	447,725	0	447,725
Materials & Services	29,998	0	29,998
Capital Outlay	3,600	0	3,600
Subtotal	481,323	0	481,323
Office of Public and Government Relations			
Personal Services	302,672		302,672
Materials & Services	129,782		129,782
Capital Outlay	0		0
Subtotal	432,454	0	432,454
Office of Citizen Involvement			
Personal Services	74,520	0	74,520
Materials & Services	10,730	0	10,730
Capital Outlay	0	0	0
Subtotal	85,250	0	85,250
Special Appropriation			
Materials & Services	125,000	66,229	191,229
Subtotal	125,000	66,229	191,229
General Expenses			
Interfund Transfers	806,169	0	806,169
Contingency	202,808	(66,229)	136,579
Subtotal	1,008,977	(66,229)	942,748
Unappropriated Balance	407,625	0	407,625
Total Fund Requirements	7,668,704	0	7,668,704

Exhibit B
Ordinance No. 95-598
FY 1994-95 SCHEDULE OF APPROPRIATIONS

	Current Appropriation	Revision	Proposed Appropriation
GENERAL FUND			
Council			
Personal Services	888,891	0	888,891
Materials & Services	102,243	0	102,243
Capital Outlay	13,800	0	13,800
Subtotal	1,004,934	0	1,004,934
Executive Management			
Personal Services	343,856	0	343,856
Materials & Services	40,002	0	40,002
Capital Outlay	1,600	0	1,600
Subtotal	385,458	0	385,458
Office of the Auditor			
Personal Services	76,373	0	76,373
Materials & Services	20,654	0	20,654
Capital Outlay	20,127	0	20,127
Subtotal	117,154	0	117,154
Special Appropriations			
Materials & Services	265,000	70,000	335,000
Subtotal	265,000	70,000	335,000
General Expenses			
Interfund Transfers	4,241,383		4,241,383
Contingency	450,089	(70,000)	380,089
Subtotal	4,691,472	(70,000)	4,621,472
Unappropriated Balance	200,000		200,000
Total Fund Requirements	6,664,018	0	6,664,018

All Other Appropriations Remain As Previously Adopted



METRO

DATE: March 23, 1995

TO: Metro Council

FROM: Mike Burton, Executive Officer

RE: Election Costs

As you have been previously notified, we received bills for the November election that exceed the \$125,000 budgeted for that election. The original bills we received were in error, and they have now been corrected. The amended bills for that election are as follows:

COUNTY	COST	%	POPULATION	%
Multnomah County	\$109,582	57%	610,000	54%
Washington County	50,019	26%	321,000	28%
Clackamas County	31,626	17%	210,000	29%
Total	\$191,227	100%	1,141,000	100%

A budget amendment to transfer \$66,228 out of Support Services Fund Contingency will be forthcoming.

After reviewing these billings and having discussions with the various county elections officials, we now believe that the amount of money budgeted in the General Fund for the May 16, 1995, Open Spaces ballot measure is insufficient. Presently \$150,000 is budgeted for that purpose and it appears an additional \$70,000 will be necessary. A budget amendment to transfer \$70,000 from General Fund Contingency will be forthcoming.

Based on the above, we are also in the process of reviewing the budgeted election costs in the proposed FY 1995-96 budget. Based on these billings, it now appears that the FY 1995-96 budgeted amount of \$75,000 is insufficient. Further information will be presented on this issue as soon as all research is completed.

Billings for local elections are regulated by Oregon Administrative Rules 165-20-050 – 165-20-060. A copy of those sections of OAR are attached for your information.

Billings are calculated by adding all costs of an election, then deducting those costs that can be directly attributed to a specific jurisdiction to produce a net cost. All registered voters for each jurisdiction having an election are then totaled to create an aggregate number of voters. The total net costs to be allocated are then divided by the number of aggregate voters. This factor is

Metro Council
March 23, 1995
Page 2.

multiplied by the registered voters in each jurisdiction to come up with a jurisdiction's portion of the allocated costs. This portion plus any direct costs incurred specifically for that jurisdiction constitute the total election cost to a district. Once a jurisdiction has reached its total number of registered voters in the calculation of aggregate voters, no others are added. Therefore, a jurisdiction adding several measures district-wide would not pay more. Jurisdictions pay less when more jurisdictions have measures in a given election.

Attc.

Oregon Administrative Rules
Apportionment of Local Election Costs

Billing for Local Elections

Purpose

165-20-050 (1) This rule provides a uniform billing system for state, county, city and special district elections as authorized under ORS 246.179, 254.046, and 255.305:

(a) All chargeable costs incurred by the county election officer for the conduct of an election held for the state on a date other than the primary or general election, shall be paid by the state, if provided by the act calling for the election or pursuant to ORS 246.179;

(b) All chargeable costs incurred by the county election officer for the conduct of an election held for a city on a date other than the primary or general election, shall be paid by the city;

(c) All chargeable costs incurred by the county election officer for the conduct of an election held for a special district shall be paid by the special district.

(2) An "Election Equipment Amortization Worksheet" (SED Form 240), "Average Ballots Cast Worksheet" (SED Form 241), "Allocated Cost Worksheet" (SED Form 242), and "Local Elections Billing Worksheet" (SED Form 243) are attached and made a part of this rule and shall be used to detail all costs to be billed to each electoral district holding an election.

(3) Any chargeable cost billed for an election shall be supported by such documentation as copies of payroll registers, invoices, vouchers, sales slips, billings, and receipts. Any cost not specified in this rule, or any unsupported chargeable cost, need not be paid.

(4) Documentation will be provided to the electoral districts upon request.

(5) Any electoral district bills and supporting documentation shall be subject to audit by the secretary of state at any time for the purpose of verifying the accuracy of the

chargeable costs.

[ED. NOTE: The form(s) referred to or incorporated by reference in this rule are available from the Elections Division.]

Stat. Auth.: ORS 246.179, 254.046 & 255.305
Hist.: SD 40-1980, f. & ef. 4-2-80; SD 16-1984, f. & ef. 9-5-84; ELECT
2-1990(Temp), f. & cert. ef. 1-19-90; ELECT 22-1990, f. & cert. ef.
6-4-90

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Definition of Terms

165-20-055 (1) "Adjustment Cost". A value which occurs when the voter registration of a district which did not have an excess credit is multiplied by the adjustment cost per elector.

(2) "Adjustment Cost Per Elector". A unit charge derived by dividing the total excess credit by the adjustment registration.

(3) "Adjustment Registration". The total aggregate registration minus the registration of those districts which have an excess credit.

(4) "Aggregate Registration". The total number of electors from all participating electoral districts within a county.

(5) "Allocated Cost". The total of all costs on the "Allocated Cost Worksheet" (SED Form 242) incurred by the county election officer for a given election.

(6) "Allocated Cost Per Elector". A unit charge determined by dividing the allocated cost by the aggregate registration.

(7) "Amortization". The allocation of a cost of an asset over its estimated economic life:

(a) "Estimated Economic Life". The period of time over which the asset will be used. This period of time cannot be longer than the estimated physical life of the asset;

(b) "Hardware". The physical equipment used in an information system;

(c) "Software or Program". The detailed instructions which direct the hardware functions of an information system;

(d) "Hardware Maintenance Agreement". An annual expenditure for the repair or preventative maintenance of the hardware portion of an information system;

(e) "Software License or Royalty". An expenditure for the licensed use of an information system's software.

(8) "Chargeable Cost". A charge directly associated with and incurred by the county election officer to conduct a given election. Chargeable costs include apportioned costs and dedicated expenditures. Costs associated with a county's voters' pamphlet shall be considered chargeable costs for local elections. Chargeable cost does not include costs incurred for a city election held on the date of the primary or general election.

(9) "Apportioned Cost". A value which occurs when the district registration is multiplied by the allocated cost per elector.

(10) "Dedicated Expenditure". Any charge associated with and incurred by the county election officer to conduct a given election but specific to one electoral district and not to be shared or apportioned to any other electoral district; such as notice of ballot title.

(11) "Election Cost". The billing cost for a district election. A value derived by subtracting the adjustment cost from the value in the total chargeable costs minus total revenue column for each district on the "Local Elections Billing Worksheet" (SED Form 243).

(12) "Electoral District". A state, county, city, special district, or other municipal corporation for which the county election officer is required to hold an election.

(13) "Excess Credit". A value which occurs when the total revenue from a district exceeds the total cost for that district election.

(14) "Revenue". The deposits placed on account with the county election officer as provided in ORS 198.775, 261.210, and 607.025 and revenues received from submission of candidate statements and arguments for publication of the county voters' pamphlet.

[ED. NOTE: The form(s) referred to or incorporated by reference in this rule are available from the Elections Division.]

Stat. Auth.: ORS 246.179, 251.365, 254.046 & 255.305
Hist.: SD 40-1980, f. & ef. 4-2-80; SD 16-1984, f. & ef. 9-5-84; ELECT 2-1990(Temp), f. & cert. ef. 1-19-90; ELECT 22-1990, f. & cert. ef. 6-4-90; ELECT 12-1992(Temp), f. & cert. ef. 5-18-92; ELECT 35-1992, f. & cert. ef. 12-15-92

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Computation of Costs

~~165-20-060~~ (1) Computation of Election Equipment

Amortization:

(a) Compute the amortization of election equipment by using the "Election Equipment Amortization Worksheet" (SED Form 240);

(b) The amortization of election equipment which is utilized specifically to conduct an election shall be computed based on one of the following:

(A) Punch card or optical scanner ballot system counties shall use the average number of ballots cast;

(B) Mark sense multiple card ballot system counties shall use the aggregate registration calculated as of December 31st of each year.

(c) The "Average Ballots Cast Worksheet" (SED Form 241) provides the procedure for estimating the average ballots cast for all elections in a given year;

(d) County election officers who have previously amortized election equipment must determine the unamortized costs of the existing elections equipment and its remaining useful economic life prior to determining a unit charge on the "Election

Equipment Amortization Worksheet" (SED Form 240);

(e) The total amortization costs billed to electoral districts over the years the elections equipment is used cannot exceed the total purchase cost of hardware and software/programming, including interest, licensing, royalty and upgrades, and annual maintenance charges. When new hardware, software or programming costs are incurred, those costs, less the unamortized costs of the replaced equipment, should be added to the total purchase cost on the "Election Equipment Amortization Worksheet" (SED Form 240) and the amortization recomputed;

(f) Amortization of election equipment is not mandatory, however, any county election officer who chooses to amortize such equipment must use the methods specified in this rule.

(2) Computation of Allocated Costs. Compute the allocated cost by using the "Allocated Cost Worksheet" (SED Form 242):

(a) List the amount expended for items within each of the nine categories in the cost column;

(b) Total each category and place that dollar value in the total column corresponding to that category;

(c) Transfer the nine category totals to the summary page;

(d) Total the nine category totals and place that total on the grand total (allocated cost) line. Grand total will be the sum of the nine category totals;

(e) Transfer the grand total (allocated cost) figure to the allocated cost line (box #1) on the "Local Elections Billing Worksheet" (SED Form 243).

(3) Computation of Local Election Costs. Compute the local election costs by using the "Local Elections Billing Worksheet" (SED Form 243):

(a) Enter every electoral district which participated in the election, such as state, county, cities, and special districts, under district name (column "A");

(b) Place the voter registration figure of each district on the district registration line corresponding to that district (column "B");

(c) Total the number of registered voters under district registration (column "B") and transfer that figure to the aggregate registration (box #2);

(d) Divide the allocated cost (box #1) by the aggregate registration (box #2). The result is the allocated cost per elector (box #3);

(e) Multiply each district's voter registration figure (column "B") by the allocated cost per elector (box #3) and place that value on the corresponding line for that district under apportioned cost (column "C");

(f) Total the entries in the apportioned cost (column "C"):

(A) The total should equal the allocated cost (box #1);

(B) If the total does not match, the values within the apportioned cost (column "C") shall be add by adding or subtracting \$0.01s from each district's apportioned cost to achieve matching totals:

(i) When adding \$0.01s, always begin with the district paying the smallest share of the apportioned cost;

(ii) When subtracting \$0.01s, always begin with the district

paying the largest share of the apportioned cost.

(g) Place all dedicated expenditure costs for each district on the line corresponding to that district under the dedicated expenditures (column "D");

(h) Total each district's apportioned cost (column "C") and dedicated expenditures (column "D") and place that dollar value on the corresponding line for that district under total chargeable costs (column "E");

(i) Place the total of all revenues received for each district on the line corresponding to that district under total revenue (column "F"). (Example: Revenues received for the publication of candidate statements or argument statements for the county voters' pamphlet.);

(j) For every district, subtract the total revenue (column "F") from the total chargeable costs (column "E"):

(A) If the result is \$0.00 or greater (costs are equal to or greater than revenues), place that dollar value in the total chargeable costs minus total revenue (column "G");

(B) If the result shows the district would receive a refund (revenues are greater than costs), place that value in the excess credit (column "H");

(C) If the result shows the district would receive a refund, place that value in excess credit (column "H"). If that revenue was from a deposit outlined in ORS 198.775, 261.210 or 607.025, circle the dollar value in excess credit (column "H") and exclude this circled dollar value and the district from any further computations (see "R" below).

(k) Total the values in excess credit (column "H") and place that dollar value in total excess credit (box #4);

(l) Adjustment registration (box #5) is computed by taking the aggregate registration (box #2) and subtracting the district registration (column "B") for each district which has an uncircled value in excess credit (column "H");

(m) Divide the total excess credit (box #4) by the adjustment registration (box #5). The result is the adjustment cost per elector (box #6);

(n) Multiply each district's voter registration figure (column "B") for district which do not have an excess credit (column "H") by the adjustment cost per elector (box #6) and place that value on the corresponding line for that district in the adjustment cost (column "I");

(o) Total the entries in adjustment cost (column "I"):

(A) The total should equal the total excess credit (box #4);

(B) If the total does not match, the values within adjustment cost (column "I"), the adjustment cost shall be adjusted by adding or subtracting \$0.01s from each adjustment cost to achieve matching totals.

(p) To determine the election cost (column "J") for each district, subtract the adjustment cost (column "I") from the value on the corresponding line in total chargeable costs minus revenue (column "G"). All districts which have a dollar value in excess credit (column "H") should have no dollar value in total chargeable costs minus revenue (column "G") or in adjustment cost (column "I"); therefore, no election cost;

(q) Billing statement originate from election cost (column "J");
(r) Refunds are only made to district (petitioners) which have a circled value in excess credit (column "H") because of a deposit pursuant to ORS 198.775, 265.210, or 607.025.

[ED. NOTE: The form(s) referred to or incorporated by reference in this rule are available from the Elections Division.]

Stat. Auth.: ORS 246.179, 254.046 & 255.305
Hist.: SD 40-1980, f. & ef. 4-2-80; SD 16-1984, f. & ef. 9-5-84; ELECT 2-1990(Temp), f. & cert. ef. 1-19-90; ELECT 22-1990, f. & cert. ef. 6-4-90

AGENDA ITEM 6.4
Meeting Date: Thursday, April 27, 1995

ORDINANCE NO. 95-599
SECOND READING: ACTION ITEM

Amending the FY 1994-95 Budget and Appropriations Schedule to Reflect Operational Needs at Metro Washington Park Zoo; and Declaring an Emergency.

Note: The First Reading of this Ordinance was April 20, 1995

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO 95-599 AMENDING THE FY 1994-95 BUDGET AND APPROPRIATIONS SCHEDULE TO REFLECT EXPECTED OPERATIONAL NEEDS AT METRO WASHINGTON PARK ZOO; AND DECLARING AN EMERGENCY

Date: March 31, 1995

Presented by: Kathy Kiaunis

FACTUAL BACKGROUND AND ANALYSIS

This action requests adjustments to the Zoo Operating Fund totaling \$274, 636. A total of \$123,030 of this amount would come from other line-items within the zoo budget and \$151,606 would come from Contingency.

This adjustment is requested for the following purposes:

1. Transfer \$37,000 from Materials and Services to Personal Services in the Animal Management division to fund additional staff costs due to the delay in closure of the Animal Care Center and unanticipated disability and family leave related expenses. Savings in animal food and animal purchase costs will offset the increased personnel costs.
2. Transfer \$65,000 from Capital Outlay to Materials and Services in Facilities Management due to increased utility usage and rates. Savings are available in Capital Outlay due to eliminating some projects and deferring painting projects until 1995-96.
3. Transfer \$5,000 from Materials and Services to Personal Services in the Marketing division to fund additional event temporary help and correction of an employee anniversary date. Funds are available from Miscellaneous Professional Services due to the elimination of ZooBloom in 1994-95.
4. Transfer \$30,782 from Contingency to Personal Services and \$120,824 from Contingency to Materials and Services in the Visitor Services division to fund additional temporary labor, food and goods for resale needed due to better than anticipated attendance and sales. Also transfer \$6,030 from Design Services Capital Outlay to Capital Outlay in Visitor Services to pay for an oven budgeted and purchased in 1993-94, but not paid for until 1994-95. Savings are available in Design Services Capital Outlay due to elimination or deferral of some projects.

5. Transfer \$10,000 from Capital Outlay to Personal Services in Design Services division to fund costs associated with vacation payouts. Funds are available from Capital Outlay due to the elimination or deferral of some budgeted projects.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 95-599.

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY 1994-95)	ORDINANCE NO. 95-599
BUDGET AND APPROPRIATIONS)	
SCHEDULE TO REFLECT OPERATIONAL)	Introduced by Mike Burton
NEEDS AT THE METRO WASHINGTON PARK)	Executive Officer
ZOO; AND DECLARING AN EMERGENCY)	

WHEREAS, The Metro Council has reviewed and considered the need to transfer appropriations with the FY 1994-95 Budget; and

WHEREAS, The need for a transfer of appropriation has been justified; and

WHEREAS, Adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS;

1. The FY 1994-95 Budget, and Schedule of Appropriations, are hereby amended as shown in the column titled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring \$151,606 from the Zoo Operating Fund Contingency and transferring \$123,030 from various appropriation categories to various other appropriation categories as reflected in Exhibits A and B to this Ordinance.

2. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this _____ day of _____, 1995.

ATTEST:

J. Ruth McFarland, Presiding Officer

Recording Secretary

Exhibit B
Ordinance No. 95-599
FY 1994-95 SCHEDULE OF APPROPRIATIONS

	Current Appropriation	Revision	Proposed Appropriation
ZOO OPERATING FUND			
Administration			
Personal Services	768,193	0	768,193
Materials & Services	174,595	0	174,595
Capital Outlay	6,180	0	6,180
Subtotal	948,968	0	948,968
Animal Management			
Personal Services	2,298,268	37,000	2,335,268
Materials & Services	532,185	(37,000)	495,185
Capital Outlay	77,446	0	77,446
Subtotal	2,907,899	0	2,907,899
Facilities Management			
Personal Services	1,822,777	0	1,822,777
Materials & Services	1,401,501	65,000	1,466,501
Capital Outlay	169,740	(65,000)	104,740
Subtotal	3,394,018	0	3,394,018
Education Services			
Personal Services	644,673	0	644,673
Materials & Services	222,300	0	222,300
Capital Outlay	7,500	0	7,500
Subtotal	874,473	0	874,473
Marketing			
Personal Services	323,762	5,000	328,762
Materials & Services	667,784	(5,000)	662,784
Capital Outlay	4,650	0	4,650
Subtotal	996,196	0	996,196
Visitor Services			
Personal Services	1,565,076	30,782	1,595,858
Materials & Services	1,297,420	120,824	1,418,244
Capital Outlay	117,000	6,030	123,030
Subtotal	2,979,496	157,636	3,137,132
Design Services			
Personal Services	285,194	10,000	295,194
Materials & Services	159,099	0	159,099
Capital Outlay	199,500	(16,030)	183,470
Subtotal	643,793	(6,030)	637,763
General Expenses			
Interfund Transfers	1,356,276	0	1,356,276
Contingency	513,781	(151,606)	362,175
Subtotal	1,870,057	(151,606)	1,718,451
Unappropriated Balance	3,685,996	0	3,685,996
Total Fund Requirements	18,300,896	0	18,300,896

All Other Appropriations Remain As Previously Adopted

Exhibit A
Ordinance No. 95-599

FISCAL YEAR 1994-95		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
Animal Management							
<u>Personal Services</u>							
511121	SALARIES-REGULAR EMPLOYEES (full time)						
	Managers	1.00	57,809		0	1.00	57,809
	Program Supervisor	1.00	52,576		0	1.00	52,576
	Associate Service Supervisor	1.00	36,269		0	1.00	36,269
	Research Coordinator	1.00	50,110		0	1.00	50,110
	Veterinarian	2.00	91,496		0	2.00	91,496
	Assistant Research Coordinator	1.00	28,281		0	1.00	28,281
511135	WAGES-TEMPORARY EMPLOYEES (part time)						
	Program Assistant 2	0.50	12,775		0	0.50	12,775
	Administrative Support Asst. - Secretary	0.50	11,076		0	0.50	11,076
511221	WAGES-REGULAR EMPLOYEES (full time)						
	Administrative Support Assistant C	1.00	27,623		0	1.00	27,623
	Records Specialist	1.00	34,217		0	1.00	34,217
511225	WAGES-REGULAR EMPLOYEES (part time)						
	Management Intern	0.15	3,871		0	0.15	3,871
	Animal Hospital Attendant	1.00	19,335		0	1.00	19,335
	Program Assistant 1	0.65	15,507		0	0.65	15,507
	Administrative Assistant	0.50	12,526		0	0.50	12,526
511235	WAGES-TEMPORARY EMPLOYEES (part time)						
	Management Intern	0.35	8,518		0	0.35	8,518
511321	REPRESENTED 483-REGULAR EMPLOYEES (full time)						
	Nutrition Technician	1.00	30,518		0	1.00	30,518
	Senior Animal Keeper	7.00	225,516		0	7.00	225,516
	Animal Keeper	26.00	796,012		0	26.00	796,012
511325	REPRESENTED 483-REGULAR EMPLOYEES (part time)						
	Animal Keeper-PT	1.50	45,776		0	1.50	45,776
511335	REPRESENTED 483-TEMPORARY EMPLOYEES (part time)						
	Animal Keeper	0.31	8,120	1.26	33,333	1.57	41,453
511400	OVERTIME		66,950		0		66,950
512000	FRINGE		663,387		3,667		667,054
	Total Personal Services	48.46	2,298,268	1.26	37,000	49.72	2,335,268
<u>Materials & Services</u>							
521100	Office Supplies		990		0		990
521111	Computer Supplies		5,035		0		5,035
521230	Vet & Medical Supplies		82,176		0		82,176
521260	Printing Supplies		670		0		670
521270	Animal Food		217,330		(32,000)		185,330
521290	Other Supplies		66,067		0		66,067
521292	Small Tools		1,550		0		1,550
521292	Small Tools		3,090		0		3,090
521310	Subscriptions & Publications		3,790		0		3,790
521320	Dues		34,985		0		34,985
524190	Misc. Professional Services		4,120		0		4,120
525640	M&R-Equipment(Contract/Agreement)		2,775		0		2,775
525710	Equipment Rental		6,542		0		6,542
526310	Printing Services		46,958		0		46,958
526500	Travel		8,892		0		8,892
526700	Temporary Help Services		2,600		0		2,600
526800	Training, Tuition, Conferences		21,115		0		21,115
526910	Uniform Supply & Cleaning		500		0		500
528100	License, Permits, Payments to Other Agencies		23,000		(5,000)		18,000
529700	Animal Purchases						
	Total Materials & Services		532,185		(37,000)		495,185
	Total Capital Outlay		77,446		0		77,446
	TOTAL EXPENDITURES	48.46	2,907,899	1.26	0	49.72	2,907,899

Exhibit A
Ordinance No. 95-599

FISCAL YEAR 1994-95		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
Facilities Management							
	Total Personal Services	41.17	1,822,777	0.00	0	41.17	1,822,777
	<u>Materials & Services</u>						
521100	Office Supplies		2,000		0		2,000
521110	Computer Software		1,500		0		1,500
521111	Computer Supplies		1,800		0		1,800
521210	Landscape Supplies		49,000		0		49,000
521220	Custodial Supplies		49,000		0		49,000
521260	Printing Supplies		500		0		500
521290	Other Supplies		15,304		0		15,304
521292	Small Tools		8,150		0		8,150
521310	Subscriptions & Publications		500		0		500
521320	Dues		946		0		946
521400	Fuels & Lubricants		34,000		0		34,000
521510	Maintenance & Repairs Supplies-Building		80,530		0		80,530
521511	Maintenance & Repairs Supplies-HVAC		24,000		0		24,000
521512	Maintenance & Repairs Supplies-Electrical		26,022		0		26,022
521520	Maintenance & Repairs Supplies-Grounds		16,500		0		16,500
521530	Maintenance & Repairs Supplies-Vehicles		14,000		0		14,000
521540	Maintenance & Repairs Supplies-Equipment		14,500		0		14,500
521550	Maintenance & Repairs Supplies-Railroad		33,000		0		33,000
524190	Misc. Professional Services		7,500		0		7,500
524210	Data Processing Services		5,000		0		5,000
525110	Utilities-Electricity		224,100		0		224,100
525120	Utilities-Water & Sewer		420,000		65,000		485,000
525130	Utilities-Natural Gas		84,000		0		84,000
525150	Utilities-Sanitation Services		54,000		0		54,000
525200	Cleaning Services		16,600		0		16,600
525610	M&R-Bldg(Contract/Agreement)		22,100		0		22,100
525620	M&R-Gmrs(Contract/Agreement)		51,135		0		51,135
525630	M&R-Vehicles(Contract/Agreement)		6,700		0		6,700
525640	M&R-Equipment(Contract/Agreement)		7,225		0		7,225
525650	M&R-Railroad(Contract/Agreement)		6,500		0		6,500
525690	M&R-Other(Contracts/Agreements)		3,000		0		3,000
525710	Equipment Rental		6,850		0		6,850
525732	Operating Lease Payments-Vehicles		3,648		0		3,648
526310	Printing Services		2,500		0		2,500
526410	Telephone		71,080		0		71,080
526440	Delivery Services		2,956		0		2,956
526500	Travel		4,700		0		4,700
526700	Temporary Help Services		5,140		0		5,140
526800	Training, Tuition, Conferences		9,055		0		9,055
526910	Uniform Supply/Cleaning Services		13,500		0		13,500
528100	License, Permits, Payments to Other Agencies		2,200		0		2,200
529500	Meetings		260		0		260
529800	Miscellaneous		500		0		500
	Total Materials & Services		1,401,501		65,000		1,466,501
	<u>Capital Outlay</u>						
571200	Purchases-Improvements Other than Buildings		7,200		0		7,200
571350	Purchases-Exhibits & Related		3,000		0		3,000
571400	Purchases-Equipment & Vehicles		3,600		0		3,600
571600	Purchases-Railroad Equipment & Facilities		26,000		0		26,000
574520	Cnstrn Wrk/Mtrl-Building, Related		109,940		(65,000)		44,940
574560	Cnstrn Wrk/Mtrl-Railroad Equipment/Facilities		20,000		0		20,000
	Total Capital Outlay		169,740		(65,000)		104,740
	TOTAL EXPENDITURES	41.17	3,394,018	0.00	0	41.17	3,394,018

Exhibit A
Ordinance No. 95-599

FISCAL YEAR 1994-95		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
Marketing							
<u>Personal Services</u>							
511121	SALARIES-REGULAR EMPLOYEES (full time)						
	Senior Program Supervisor	1.00	55,228		2,455	1.00	57,683
	Assoc. Pub. Affairs Specialist	1.00	37,015		0	1.00	37,015
	Asst. Pub. Affairs Specialist	1.00	40,825		0	1.00	40,825
	Event Technician	1.00	31,163		0	1.00	31,163
511225	WAGES-REGULAR EMPLOYEES (part time)						
	Administrative Secretary	0.75	17,046		0	0.75	17,046
	Program Assistant 1	0.50	13,409		0	0.50	13,409
	Educational Service Aide 2	0.72	16,428		0	0.72	16,428
511235	WAGES-TEMPORARY EMPLOYEES (part time)						
	Education Service Aide II	0.34	6,193		0	0.34	6,193
511335	REPRESENTED 483-TEMPORARY EMPLOYEES (part time)						
	Laborer	0.78	17,312	0.05	1,074	0.78	18,386
511400	OVERTIME		0		591		591
512000	FRINGE		89,143		880		90,023
Total Personal Services		7.09	323,762	0.05	5,000	7.09	328,762
<u>Materials & Services</u>							
521100	Office Supplies		1,900		0		1,900
521111	Computer Supplies		1,450		0		1,450
521290	Other Supplies		8,250		0		8,250
521293	Promotion Supplies		90,647		0		90,647
521310	Subscriptions		2,305		0		2,305
521320	Dues		1,395		0		1,395
524130	Promotional Services		64,650		0		64,650
524190	Misc. Professional Services		230,176		(5,000)		225,176
525110	Utilities-Electricity		700		0		700
525120	Utilities-Water & Sewer		300		0		300
525640	M&R-Equipment(Contract/Agreement)		4,775		0		4,775
525710	Equipment Rental		7,470		0		7,470
525731	Operating Lease Payments-Building		18,500		0		18,500
526200	Ads & Legal Notices		148,120		0		148,120
526310	Printing Services		66,701		0		66,701
526320	Typesetting & Reprographics Services		4,000		0		4,000
526440	Delivery Service		870		0		870
526500	Travel		6,150		0		6,150
526700	Temporary Help Services		2,880		0		2,880
526800	Training, Tuition, Conferences		1,275		0		1,275
526910	Uniform Supply & Cleaning		850		0		850
528100	License, Permits, Payments to Other Agencies		2,360		0		2,360
529500	Meetings		1,545		0		1,545
529800	Miscellaneous		515		0		515
Total Materials & Services			667,784		(5,000)		662,784
Total Capital Outlay			4,650		0		4,650
TOTAL EXPENDITURES		7.09	996,196	0.05	0	7.09	996,196

Exhibit A
Ordinance No. 95-599

FISCAL YEAR 1994-95		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
Visitor Services							
<u>Personal Services</u>							
511121	SALARIES-REGULAR EMPLOYEES (full time)						
	Managers	1.00	55,099		0	1.00	55,099
	Senior Service Supervisor	2.00	88,114		0	2.00	88,114
	Associate Service Supervisor	5.00	148,352		0	5.00	148,352
	Catering Coordinator	1.00	31,313		0	1.00	31,313
511125	SALARIES-REGULAR EMPLOYEES (part time)						
	Catering Coordinator	0.90	29,072		0	0.90	29,072
	Associate Service Supervisor	0.75	21,376		0	0.75	21,376
511225	WAGES-REGULAR EMPLOYEES (part time)						
	Administrative Secretary	1.50	44,444		0	1.50	44,444
	Office Assistant	0.85	15,873		0	0.85	15,873
	Food Service/Retail Specialist	1.00	25,889		0	1.00	25,889
	Visitor Service Worker 3-reg	5.00	86,456		0	5.00	86,456
	Visitor Service Worker 1-reg	0.25	5,150		0	0.25	5,150
511235	WAGES-TEMPORARY EMPLOYEES (part time)						
	Staff Assistant	0.25	5,000		0	0.25	5,000
511241	WAGES-SEASONAL EMPLOYEES						
	Visitor Service Worker 3-temp	3.50	57,733		0	3.50	57,733
	Visitor Service Worker 2-temp	10.50	157,853		0	10.50	157,853
	Visitor Service Worker 1-temp	21.00	252,126	2.25	27,732	21.00	279,858
511321	REPRESENTED 483-REGULAR EMPLOYEES (full time)						
	Typist/Receptionist-reg	1.00	22,044		0	1.00	22,044
511325	REPRESENTED 483-REGULAR EMPLOYEES (part time)						
	Typist/Receptionist Reg.(Part Time)	2.25	49,599		0	2.25	49,599
511335	REPRESENTED 483-TEMPORARY EMPLOYEES (part time)						
	Typist/Receptionist-temp	1.60	31,417		0	1.60	31,417
	Stationmaster-temp	2.20	53,607		0	2.20	53,607
511400	OVERTIME		15,450		0		15,450
512000	FRINGE		369,109		3,050		372,159
Total Personal Services		61.55	1,565,076	2.25	30,782	61.55	1,595,858
<u>Materials & Services</u>							
521100	Office Supplies		2,600		0		2,600
521110	Computer Software		900		0		900
521220	Custodial Supplies		8,200		0		8,200
521250	Tableware Supplies		86,158		0		86,158
521290	Other Supplies		26,703		0		26,703
521310	Subscriptions/Publications		450		0		450
521320	Dues		630		0		630
521540	Maintenance & Repairs Supplies-Equipment		2,600		0		2,600
523100	Merchandise for Resale-Food		593,647		78,624		672,271
523200	Merchandise for Resale-Retail		469,530		42,200		511,730
524190	Misc. Professional Services		9,700		0		9,700
525640	M&R-Equipment(Contract/Agreement)		34,300		0		34,300
525710	Equipment Rental		14,652		0		14,652
526200	Ads & Legal Notices		2,300		0		2,300
526310	Printing Services		26,600		0		26,600
526500	Travel		5,600		0		5,600
526800	Training, Tuition, Conferences		3,000		0		3,000
526910	Uniform Supply & Cleaning		9,000		0		9,000
528100	License, Permits, Payments to Other Agencies		650		0		650
529500	Meetings		200		0		200
Total Materials & Services			1,297,420		120,824		1,418,244
<u>Capital Outlay</u>							
571500	Purchases-Office Furniture & Equipment		117,000		6,030		123,030
Total Capital Outlay			117,000		6,030		123,030
TOTAL EXPENDITURES		61.55	2,979,496	2.25	157,636	61.55	3,137,132
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Exhibit A
Ordinance No. 95-599

FISCAL YEAR 1994-95		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
Design Services							
<u>Personal Services</u>							
511121	SALARIES-REGULAR EMPLOYEES (full time)						
	Associate Program Supervisor	1.00	47,680		5,100	1.00	52,780
	Graphics/Exhibit Designer	1.00	37,015		0	1.00	37,015
	Project Coordinator	0.25	9,882		2,500	0.25	12,382
511125	SALARIES-REGULAR EMPLOYEES (part time)						
	Graphics/Exhibit Designer	1.00	37,013		0	1.00	37,013
511221	WAGES-REGULAR EMPLOYEES (full time)						
	Program Assistant 2-Graphics	1.00	31,987		0	1.00	31,987
511225	WAGES-REGULAR EMPLOYEES (part time)						
	Administrative Secretary	0.75	23,275		0	0.75	23,275
	Program Assistant 2-Graphics	0.50	12,527		0	0.50	12,527
511400	OVERTIME		1,648		0		1,648
512000	FRINGE		84,167		2,400		86,567
	Total Personal Services	5.50	285,194	0.00	10,000	5.50	295,194
	Total Materials & Services		159,099		0		159,099
<u>Capital Outlay</u>							
571350	Purchases-Exhibits & Related		30,000		0		30,000
571500	Purchases-Office Furniture & Equipment		6,500		0		6,500
574120	Architectural Services		5,000		0		5,000
574130	Engineering Services		5,000		0		5,000
574520	Cnstn Wrk/Mtrl-Building, Related		153,000		(16,030)		136,970
	Total Capital Outlay		199,500		(16,030)		183,470
	TOTAL EXPENDITURES	5.50	643,793	0.00	(6,030)	5.50	637,763
General Expenses							
	Total Interfund Transfers		1,356,276		0		1,356,276
<u>Contingency and Unappropriated Balance</u>							
599999	Contingency		513,781		(151,606)		362,175
599990	Unappropriated Balance		3,685,996				3,685,996
	Total Contingency and Unappropriated Balance		4,199,777		(151,606)		4,048,171
	TOTAL EXPENDITURES	198.79	18,300,896	3.56	0	200.05	18,300,896

AGENDA ITEM 6.5
Meeting Date: Thursday, April 27, 1995

ORDINANCE NO. 95-595
SECOND READING: ACTION ITEM

Amending the FY 1994-95 Budget and Appropriations Schedule for the Purpose of Reflecting Funding Increases Due to Costs Associated With Household Hazardous Waste Events, Delivered Solid Waste Tonnage in Excess of Budget Expectations, and Transferring Appropriations Within the Solid Waste Revenue Fund and the Rehabilitation and Enhancement Fund; and Declaring an Emergency.

Note: The First Reading of this Ordinance was April 20, 1995

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 95-595, AMENDING THE FY 1994-95 BUDGET AND APPROPRIATIONS SCHEDULE FOR THE PURPOSE OF REFLECTING FUNDING INCREASES DUE TO COSTS ASSOCIATED WITH HOUSEHOLD HAZARDOUS WASTE EVENTS, DELIVERED SOLID WASTE TONNAGE IN EXCESS OF BUDGET EXPECTATIONS, AND TRANSFERRING APPROPRIATIONS WITHIN THE SOLID WASTE REVENUE FUND AND THE REHABILITATION AND ENHANCEMENT FUND; AND DECLARING AN EMERGENCY.

Date: April 6, 1995

Presented by: Roosevelt Carter

FACTUAL BACKGROUND AND ANALYSIS

This action requests adjustments to the Solid Waste Revenue Fund and the Rehabilitation and Enhancement Fund for the following purposes:

SOLID WASTE REVENUE FUND

1. Transfer \$150,000 from the Operations Division, Operating Account, Materials & Services Category, as follows:
 - a) \$120,000 to the Operations Division, Operating Account, Personal Services Category, to fund costs associated with household hazardous waste collection events.
 - b) \$30,000 to the Operations Division, Operating Account, Personal Services Category to fund costs associated with St. Johns Landfill seasonal activities.
2. Transfer \$12,115 from the Operations Division, Operating Account, Materials and Services Category to the General Account, Operations Division, Capital Category, to reclassify Capital items included as Materials & Services in the Flow Control Enforcement Contract.
3. Transfer \$15,000 from the Budget and Finance Division, Operating Account, Materials & Services Category, to the Budget and Finance Division, General Account, Capital Category to appropriately classify certain expenditures as Capital Outlay expenditures.

REHABILITATION AND ENHANCEMENT FUND

4. Transfer \$5,000 from the Forest Grove Account, Contingency Category, to the Forest Grove Account, Materials & Services Category.
5. Transfer \$15,000 from the Oregon City Account, Contingency Category, to the Oregon City Account, Materials & Services Category.

These two transfers are required to fund increased costs associated with higher than originally estimated tonnage flows through June 30, 1995.

6. Transfer \$315 from the Contingency Category to the Composter Enhancement Account, Materials & Services Category, to reflect actual interest accrued in this account during FY 1994-95. This allows for all funds in this account to be spent during FY 1994-95 and close the account.

Each action will be explained separately.

SOLID WASTE REVENUE FUND

- "1. a) Transfer \$120,000 to the Operations Division, Operating Account, Personal Services Category, Operations Division, to fund costs associated with hazardous waste collection events and St. Johns Landfill seasonal activities."*

FY 1994-95 Household Hazardous Waste Collection Events

In a budget note to the FY 1994-95 budget, the Council indicated the Department should develop a plan for providing hazardous waste services in outlying areas, primarily east Multnomah and Washington Counties. After working with local governments and the Solid Waste Advisory Committee, staff presented a draft plan to the Council in December 1994. A key element of this plan called for 8-10 satellite events per year. Four satellite events had occurred successfully in the first part of FY 1994-95.

Alternative means of providing the same services by using contractors have been fully investigated. There are two ways in which to configure contract services: (1) contract for the complete event -- planning, organizing, and implementation, and (2) contract only for the temporary labor for the events.

The household hazardous waste collection events held prior to 1990 were done using the first option, contracting for the complete event. Since that time, all hazardous waste events have been managed and held using Metro employees exclusively. Non-financial reasons for the initial decision to go in this direction include liability, work scope control (reuse, recycling needs, safety), and flexibility.

The second alternative would be to use a contractor to supply only the temporary labor for the events. The cost for hiring temporary employees through a temporary employment agency is 40-55% higher than the compensation rate for Metro temporary employees. Metro temporaries cost \$12.47 plus 11% fringe, for a total of \$13.84 per hour. The use of a temporary service would increase the cost to \$17.00 per hour. Also, the events are held on Sunday and ORS 279.334 requires Metro to pay time and a half for contract labor on Sunday; a requirement that does not apply to temporary Metro employees not exceeding 40 hours per week. This would increase the average cost per event by approximately \$10,000. Given eight events per year, staff estimates that the total cost per year would be \$80,000 higher with contract employees.

Staff continues to compare the costs of contracting versus in-house services. Over the last ten events conducted with Metro employees, the average cost per customer has been \$68. As a comparison, DEQ currently contracts for the same service outside the Metro region with a private vendor at \$96 per customer.

The amount of \$120,000 is the equivalent of 4.75 Temporary FTE to cover work performed during FY 1994-95.

"1. b) Transfer \$30,000 to the Operations Division, Operating Account, Personal Services Category to fund costs associated with St. Johns Landfill seasonal activities."

St. Johns Landfill Seasonal Activities

Currently, four full-time staff are budgeted and assigned to the landfill for closure and maintenance activities. Other operations staff, including scalehouse and hazardous waste technicians, have provided cost-effective, temporary assistance to the St. Johns Landfill gas monitoring project over the past year, and anticipate continuing this service for at least the near-term horizon. These Metro permanent staff are less costly than contractor employees, and more importantly, are more reliable in providing monitoring and oversight functions on a very expensive construction project.

This amendment transfers \$30,000 from the Operations Division, Operating Account, Materials & Services Category, to the Operations Division, Operating Account, Personal Services Category to pay for these temporary employees.

The amount of \$30,000 is the equivalent of 1.00 Temporary FTE to cover work performed during FY 1994-95.

"2. Transfer \$12,115 from the Operations Division, Operating Account, Materials and Services Category to the General Account, Operations Division, Capital Category, to reclassify Capital items included as Materials & Services in the Flow Control Enforcement Contract."

Flow Control Enforcement Contract

Under an agreement with the Multnomah County Sheriff's Office, Metro has inadvertently budgeted and paid for capital items (two-way radios, computer, video camera, etc.) in the Miscellaneous Professional Services classification. This occurred as a result of misinterpretation of a clause allowing the County first right of refusal on the repurchase (at fair market value) of certain items should the contract be terminated.

The Accounting staff has determined that Metro possesses legal ownership of these items in spite of the clause giving Multnomah County repurchase rights. Furthermore, these items should be depreciated in the annual financial statements.

To correct this situation, it is necessary to reclassify these purchases as capital items. This action will require the transfer of \$12,115 from the Operating Account, Operations Division, Materials & Services Category, to the General Account, Operations Division, Capital Outlay to cover items already charged to Materials & Services, and for the remaining fiscal year.

"3. Transfer \$15,000 from the Budget and Finance Division, Operating Account, Materials & Services Category, to the Budget and Finance Division, General Account, Capital Category to appropriately classify certain expenditures as Capital Outlay expenditures."

Expenditures Reclassification

The FY 1994-95 Budget & Finance Division budget includes \$21,260 in the Materials & Services Category for Maintenance & Repair Equipment. This amount includes \$15,000 for computer replacements and upgrades. Originally, it was planned that existing machines would be upgraded.

However, it is more cost-effective to buy new machines than to upgrade old computers. This action requests the transfer of \$ 15,000 from the Budget & Finance Division, Operating Account, Materials and Services Category to the Budget & Finance Division, General Account, Capital Category.

REHABILITATION AND ENHANCEMENT FUND

- "4. Transfer \$5,000 from the Forest Grove Account, Contingency Category, to the Forest Grove Account, Materials & Services Category.*
- 5. Transfer \$15,000 from the Oregon City Account, Contingency Category, to the Oregon City Account, Materials & Services Category."*

Delivered Solid Waste Tonnage in Excess of Budget Expectations

The privately-owned Forest Grove Transfer Station collects and remits to Metro a Rehabilitation and Enhancement fee of \$.50 per ton for all waste that is disposed at the station. Metro then transmits these funds to the City of Forest Grove for enhancement projects in the vicinity of the transfer station. A similar fee is collected directly by Metro and is remitted to the City of Oregon City for community enhancement projects near the Metro South Station.

FY 1994-95 estimates of payments for the Cities of Forest Grove and Oregon City prepared last year were based on 68,235 tons and 385,381 tons respectively. Current projections revise those estimates upward to 69,430 for Forest Grove and 390,342 for Oregon City. Contingency of \$50,000 was included in the budget to provide funds, if projections for tonnage at transfer stations were exceeded. A transfer of \$5,000 for the Forest Grove Account and \$15,000 for the Oregon City Account are required to ensure that adequate appropriations are available in each account for dispersal.

- "6. Transfer \$315 from the Contingency Category to the Composter Enhancement Account, Materials & Services Category, to reflect actual interest accrued in this account during FY 1994-95. This allows for all funds in this account to be spent during FY 1994-95 and close the account."*

Composter Community Enhancement Program

The program began when the Riedel MSW Composter facility opened in 1991. The \$.50 per ton fee was collected on all waste disposed at the facility during operation until early in 1992. Nine projects selected by the citizen oversight committee were funded totaling \$64,587, leaving a balance of \$2,335; the remaining funds were approved by the committee for dispersal this year. Actual interest that accrued in the account prior to final dispersal totals an additional \$315. Action requested would transfer \$315 from the Contingency Account to the Composter Enhancement Account, Materials and Services Category. All funds in the account will be spent in FY 1994-95; and the appropriation to this account for FY 1995-96 will be deleted.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 95-595.

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY 1994-95)
BUDGET AND APPROPRIATIONS SCHEDULE)
FOR THE PURPOSE OF REFLECTING FUNDING)
INCREASES DUE TO COSTS ASSOCIATED WITH)
HOUSEHOLD HAZARDOUS WASTE EVENTS,)
DELIVERED SOLID WASTE TONNAGE IN)
EXCESS OF BUDGET EXPECTATIONS, AND)
TRANSFERRING APPROPRIATIONS WITHIN THE)
SOLID WASTE REVENUE FUND AND THE)
REHABILITATION AND ENHANCEMENT FUND;)
AND DECLARING AN EMERGENCY.)

ORDINANCE NO. 95-595

Introduced by Mike Burton
Executive Officer

WHEREAS, additional funding is required for the remaining household hazardous waste satellite collection events mandated by the Regional Solid Waste Management Plan, and

WHEREAS, solid waste tonnage received at the Forest Grove Transfer Station and the Oregon City Transfer Station are above forecast requiring larger Rehabilitation and Enhancement Fees to be collected and passed through to local governments, and

WHEREAS, it is appropriate to expend the last of the funds in the Rehabilitation and Enhancement account for the discontinued composter facility, and

WHEREAS, it is proposed for Metro to hire its own temporaries rather than contract for seasonal work at the St. Johns Landfill, and

WHEREAS, it is necessary to correctly reflect some expenditures as capital rather than Materials & Services, and

WHEREAS, The Metro Council has reviewed and considered the need to transfer appropriations within the FY 1994-95 Budget; and

WHEREAS, The need for a transfer of appropriation has been justified; and

WHEREAS, Adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS;

1. That the FY 1994-95 Budget and Schedule of Appropriations are hereby amended as shown in the column titled "Revision" of Exhibits A and B to this Ordinance

for the purpose of transferring within the Solid Waste Revenue Fund: \$15,000 from Budget & Finance Division Materials & Services to the General Account Capital Outlay, \$150,000 From the to the Operations Division Materials & Services to the Operations Division Personal Services, \$12,115 from the Operations Division Materials & Services Division to the General Account Capital Outlay, and adding 5.75 FTE temporary employees.

2. That the FY 1994-95 Budget and Schedule of Appropriations are hereby amended as shown in the column titled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring from the Rehabilitation & Enhancement Fund Contingency: \$315 to the Composter Enhancement Account Materials & Services, \$5,000 to the Forest Grove Account Materials & Services, and \$15,000 to the Oregon City Account Materials & Services.

3. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this ____ day of _____, 1995.

ATTEST:

J. Ruth McFarland, Presiding Officer

Recording Secretary

RSR I:\BUDGET\FY94-95\BUDORD\95-595\ORD.DOC

Exhibit A
Ordinance No. 95-595

Solid Waste Revenue Fund

FISCAL YEAR 1994-95		CURRENT BUDGET		REVISION		ORDINANCE 95-595	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
Operating Account (Budget and Finance)							
	Total Personal Services	8.00	495,560			8.00	495,560
	<u>Materials & Services</u>						
521110	Computer Software		5,470				5,470
521111	Computer Supplies		2,045				2,045
521310	Subscriptions		225				225
521320	Dues		75				75
524190	Misc. Professional Services		94,815				94,815
525640	Maintenance & Repairs Services-Equipment		21,260		(15,000)		6,260
525740	Capital Lease Payments-Furniture & Equipment		10,105				10,105
526200	Ads & Legal Notices		515				515
526310	Printing Services		25,000				25,000
526320	Typesetting & Reprographics Services		1,000				1,000
526420	Postage		56,015				56,015
526500	Travel		3,350				3,350
526510	Mileage Reimbursement		1,030				1,030
526612	Disposal Operations-Landfill Disposal		127,075				127,075
526800	Training, Tuition, Conferences		7,625				7,625
526900	Miscellaneous Purchased Services		0				0
528100	License, Permits, Payments to Other Agencies		716,545				716,545
529500	Meetings		105				105
	Total Materials & Services		1,072,255		(15,000)		1,057,255
	TOTAL EXPENDITURES	8.00	1,567,815		(15,000)	8.00	1,552,815

Operating Account (Operations)

	<u>Personal Services</u>						
511121	SALARIES-REGULAR EMPLOYEES (full time)						
	Senior Manager	1.00	60,803			1.00	60,803
	Sr. Solid Waste Planner	1.00	50,382			1.00	50,382
	Assoc. Solid Waste Planner	1.00	48,174			1.00	48,174
	Associate Program Supervisor	3.00	125,979			3.00	125,979
	Hazardous Waste Specialist	5.00	179,208			5.00	179,208
	Senior Service Supervisor	1.00	42,226			1.00	42,226
	Service Supervisor	2.00	70,764			2.00	70,764
511221	WAGES-REGULAR EMPLOYEES (full time)						
	Hazardous Waste Technician	17.00	519,556			17.00	519,556
	Equipment Operator	1.00	32,366			1.00	32,366
	Scalehouse Technician	14.00	416,325			14.00	416,325
511225	WAGES-REGULAR EMPLOYEES (part time)						
	Scalehouse Technician	2.15	52,490			2.15	52,490
511235	WAGES-TEMPORARY EMPLOYEES (part time)						
	Temporary	0.00	0	5.75	135,000	5.75	135,000
511400	OVERTIME		53,500				53,500
512000	FRINGE		710,862		15,000		725,862
	Total Personal Services	48.15	2,362,635	5.75	150,000	53.90	2,512,635
	<u>Materials & Services</u>						
521100	Office Supplies		13,000				13,000
521110	Computer Software		4,500				4,500
521111	Computer Supplies		4,200				4,200
521210	Landscape Supplies		6,000				6,000

Exhibit A
Ordinance No. 95-595

Solid Waste Revenue Fund

FISCAL YEAR 1994-95		CURRENT BUDGET		REVISION		ORDINANCE 95-595	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
Operating Account (Operations Continued)							
521220	Custodial Supplies		1,500				1,500
521260	Printing Supplies		2,500				2,500
521290	Other Supplies		102,000				102,000
521292	Small Tools		7,000				7,000
521293	Promotion Supplies		12,000				12,000
521310	Subscriptions		4,085				4,085
521320	Dues		800				800
521400	Fuels & Lubricants		11,000				11,000
521410	Fuels & Lubricants - Tax Exempt		1,193,313				1,193,313
521510	Maintenance & Repairs Supplies-Building		2,700				2,700
521520	Maintenance & Repairs Supplies-Grounds		3,100				3,100
521530	Maintenance & Repairs Supplies-Vehicles		2,000				2,000
521540	Maintenance & Repairs Supplies-Equipment		93,700				93,700
524130	Promotion/Public Relations		5,500				5,500
524190	Misc. Professional Services		1,545,591		(12,115)		1,533,476
524210	Data Processing Services		10,000				10,000
525110	Utilities-Electricity		26,000				26,000
525120	Utilities-Water & Sewer		22,000				22,000
525610	Maintenance & Repairs Services-Building		8,000				8,000
525630	Maintenance & Repairs Services-Vehicles		4,200				4,200
525640	Maintenance & Repairs Services-Equipment		100,435				100,435
525710	Equipment Rental		8,000				8,000
525720	Rentals - Land & Building		15,562				15,562
525740	Capital Lease Payments-Furniture & Equipment		27,800				27,800
526200	Ads & Legal Notices		18,000				18,000
526310	Printing Services		26,000				26,000
526320	Typesetting & Reprographics Services		1,500				1,500
526410	Telephone		30,000				30,000
526420	Postage		10,000				10,000
526430	Catalogues & Brochures		1,500				1,500
526500	Travel		6,300				6,300
526510	Mileage Reimbursement		6,160				6,160
526610	Disposal Operations		5,421,745				5,421,745
526611	Disposal Operations-Transportation		10,354,036				10,354,036
526612	Disposal Operations-Landfill Disposal		21,818,774				21,818,774
526613	Disposal Operations-Hazardous Material		1,893,400		(120,000)		1,773,400
526700	Temporary Help Services		30,000		(30,000)		0
526800	Training, Tuition, Conferences		55,200				55,200
526910	Uniform Supply & Cleaning Services		49,800				49,800
526911	Disposal Protective Gear		80,000				80,000
528100	License, Permits, Payments to Other Agencies		17,875				17,875
528310	Real Property Taxes		350				350
529500	Meetings		3,500				3,500
Total Materials & Services			43,060,626		(162,115)		42,898,511
TOTAL EXPENDITURES		48.15	45,423,261	5.75	(12,115)	53.90	45,411,146

Exhibit A
Ordinance No. 95-595

Solid Waste Revenue Fund

FISCAL YEAR 1994-95		CURRENT BUDGET		REVISION		ORDINANCE 95-595	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
General Account							
	<u>Capital Outlay</u>						
	BUDGET AND FINANCE						
571500	Purchases-Office Furniture & Equipment		21,355		15,000		36,355
	OPERATIONS						
571400	Purchases-Equipment & Vehicles		50,000		8,900		58,900
571500	Purchases-Office Furniture & Equipment		10,000		3,215		13,215
	WASTE REDUCTION						
574520	Construction - Buildings and Related		25,000				25,000
	ADMINISTRATION						
571500	Purchases-Office Furniture & Equipment		28,315				28,315
	METRO SOUTH						
574130	Engineering Services		30,000				30,000
574520	Construction Work-Improvements		303,000				303,000
	ST. JOHNS LANDFILL						
574571	Const. Work/Materials-Final Cover & Imp.		80,000				80,000
	METRO CENTRAL IMPROVEMENTS						
574520	Const. Work/Materials-Bldgs, Exhibits & Rel.		114,000				114,000
	Total Capital Outlay		661,670		27,115		688,785
	Total Requirements		661,670		27,115		688,785
	TOTAL REVENUE FUND EXPENDITURES	102.95	90,550,007	0.00	0	102.95	90,550,007

Exhibit A
Ordinance No. 95-595

Rehabilitation & Enhancement Fund

FISCAL YEAR 1994-95		CURRENT BUDGET		REVISION		ORDINANCE 95-595	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<u>Materials & Services</u>							
NORTH PORTLAND ENHANCEMENT ACCOUNT							
524190	Misc. Professional Services		445,000				445,000
526200	Ads & Legal Notices		500				500
526310	Printing Services		700				700
526420	Postage		400				400
526800	Training, Tuition, and Conferences		500				500
529500	Meetings		360				360
COMPOSTER ENHANCEMENT ACCOUNT							
524190	Misc. Professional Services		2,335		315		2,650
METRO CENTRAL ENHANCEMENT ACCOUNT							
524190	Misc. Professional Services		387,750				387,750
526200	Ads & Legal Notices		500				500
526310	Printing Services		552				552
526420	Postage		500				500
529500	Meetings		500				500
FOREST GROVE ACCOUNT							
528100	License, Permits, Payments to Other Agencies		34,118		5,000		39,118
OREGON CITY ACCOUNT							
528100	License, Permits, Payments to Other Agencies		192,690		15,000		207,690
Total Materials & Services			1,066,405		20,315		1,086,720
599999	Contingency		250,000		(20,315)		229,685
TOTAL EXPENDITURES		0.00	2,743,375	0.00	0	0.00	2,743,375

Exhibit B
Ordinance 95-595

	Current Appropriation	Revision	ORD. NO. 95-595 Proposed Appropriation
SOLID WASTE REVENUE FUND			
Budget and Finance			
Personal Services	495,560		495,560
Materials & Services	1,072,255	(15,000)	1,057,255
Subtotal	1,567,815	(15,000)	1,552,815
Operations			
Personal Services	2,362,635	150,000	2,512,635
Materials & Services	43,060,626	(162,115)	42,898,511
Subtotal	45,423,261	(12,115)	45,411,146
General Account			
Capital Outlay	661,670	27,115	688,785
Subtotal	661,670	27,115	688,785
Total Fund Requirements	90,550,007	0	90,550,007
REHABILITATION & ENHANCEMENT FUND			
Composter Enhancement Account			
Materials & Services	2,335	315	2,650
Subtotal	2,335	315	2,650
Forest Grove Account			
Materials & Services	34,118	5,000	39,118
Subtotal	34,118	5,000	39,118
Oregon City Account			
Materials & Services	192,690	15,000	207,690
Subtotal	192,690	15,000	207,690
General Expenses			
Interfund Transfers	42,254		42,254
Contingency	250,000	(20,315)	229,685
Subtotal	292,254	(20,315)	271,939
Total Fund Requirements	2,743,375	0	2,743,375
TOTAL APPROPRIATIONS	206,805,631	0	206,805,631

AGENDA ITEM 7.1
Meeting Date: Thursday, April 27, 1995

RESOLUTION NO. 95-2136

For the Purpose of Confirming A Citizen Member Appointee to The Metro Policy Advisory Committee.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 95-2136 FOR THE PURPOSE OF CONFIRMING A CITIZEN MEMBER APPOINTEE TO THE METRO POLICY ADVISORY COMMITTEE (MPAC).

Date: April 12, 1995

PROPOSED ACTION:

To adopt a resolution naming Richard Ares to serve as citizen members of MPAC representing Metro. Council approval constitutes confirmation as required by the Metro Charter and Metro Code Section 6.01.030.

BACKGROUND:

Richard Ares has had a varied career ranging from his current profession as a consultant for emerging wireless telecommunications companies and traditional wireline telephone companies, to his work developing and running a number of businesses in the telecommunications industry and experience owning and operating a successful nursery called the Sunshine Valley Growers.

Richard Ares has a long history of public service and citizen involvement in matters that are relevant to Metro. He currently serves on the Mt. Hood Economic Alliance, served as a member of the Board of Directors of the Metropolitan Exposition/Recreation Commission (MERC) from 1988-1994, and on the City Club of Portland's Task Force on Regional Government from 1986-1988.

Similarly his public involvement in Clackamas County has been comprehensive. He has served on Clackamas County's Planning Commission, Economic Development Commission, Blue Ribbon Committee on Governmental Services, and most recently, the Elected Officials Compensation Committee.

A copy of his resume is attached for additional information.

BEFORE THE METRO COUNCIL

**FOR THE PURPOSE OF CONFIRMING
CITIZEN MEMBER APPOINTEES TO
THE METRO POLICY ADVISORY
COMMITTEE (MPAC)**

) RESOLUTION NO. 95-
)
)
) Introduced by Mike Burton,
) Executive Officer

WHEREAS, The Metro charter, and Metro Code Section 6.01.030, provides that three citizen members of the Metro Policy Advisory Committee (MPAC) shall be appointed by the Executive Officer and confirmed by the council, and;

WHEREAS, The citizen members representing Metro serve indefinite terms until such time as they may be replaced by subsequent appointment or appointments of the Executive officer and confirmed by the council.

BE IT RESOLVED,

That Richard D. Ares be confirmed as a member of the Metro Policy Advisory Committee (MPAC).

ADOPTED by the Metro Council this ____ day of _____, 1995.

J. Ruth McFarland, Presiding Officer

RECEIVED

APR 14 1995

EXECUTIVE OFFICER

Richard D. Ares
11786 S. E. Idleman Road
Portland, Oregon 97266

503-788-9193
503-771-8470 fax

Career Experience

The Dryden Group
Principal

November, 1994 -- Present

The Dryden Group is a consulting company with two divisions. The first division provides services to newly emerging wireless telecommunications companies and traditional wireline telephone companies. The second division is active in residential home refurbishing and related real estate services.

Advanced Information Solutions, Inc.
Vice President - Business Development

October, 1993 -- November, 1994

AIS Telecommunications Services, Inc.
Vice President - Chief Operating Officer

AIS is an IBM *Premier* Business Partner providing integrated software packages, billing systems, computers and custom software development to general business, government and local exchange telecommunications companies. AIS TS provides Prepaid Calling Cards, call processing and clearing house services to telecommunications companies, corporate and promotional markets, nationwide.

- ♦ Responsible for all operational aspects of start-up telecommunications company (AIS TS).
- ♦ Developed network configuration and negotiated contracts.
- ♦ Developed business opportunities in telecommunications marketplace.
- ♦ Responsible for industry relations.
- ♦ Responsible for Regulatory Tariffs and Certification in all 50 states.

Western Teledata, Inc.

February, 1992 -- October, 1993

President - Chief Executive Officer

WTI, acquired by AIS, was a data processing, billing service bureau and software development company serving the local exchange telecommunications industry. Reported to a Board of Directors.

- ♦ Located buyer and negotiated sale of company.
- ♦ Reorganized corporate debt, equity and stock structure to prepare company for sale or merger.
- ♦ Analyzed, packaged and negotiated sale of subsidiary company located in Mid-West.
- ♦ Reorganized, refocused and downsized staff to re-establish profitability.
- ♦ Expanded product lines into "non-traditional" telecommunications services.
- ♦ Developed new products using state of the art software development technology.
- ♦ Developed and implemented marketing plans to introduce new products.

Clear Creek Mutual Telephone Co.

July, 1983 -- February, 1992.

General Manager - Chief Executive Officer

Clear Creek is a locally owned telephone company serving its suburban community since 1903. Reported to a Board of Directors.

- ♦ Developed & implemented service modernization plan, installed digital switching and fiber optic transmission systems.
- ♦ Established profitability and improved ratios each year.
- ♦ Improved regulatory & industry relations.
- ♦ Improved customer & community relations.
- ♦ Personally viewed as "industry leader".
- ♦ Developed profitable non-regulated subsidiary company.

O'Reilly & Ares, Inc.

December, 1976 -- May 1983.

Vice President/Principal

Owned and operated wholesale nurseries under the Sunshine Valley Growers name.

- ♦ Acquired bankrupt nursery, reorganized and built to profitability.
- ♦ Established national markets.
- ♦ Balanced sales between large & small, national and local accounts.

Xerox Corporation

May, 1966 -- March 1977.

Executive Management & Technical positions.

Held various executive management & technical positions in five west coast locations.

- ♦ New Product Introduction Manager.
- ♦ Plant Manager - Manufacturing.
- ♦ Quality Assurance Manager.
- ♦ Field Service Manager.
- ♦ Marketing, Administration & Logistics Management experience.
- ♦ Technical Representative.

Telecommunications Industry Experience

- ♦ **Independent Telecommunications Network, Inc. -- Overland Park, Kansas**
1989 -- Present
Member, Board of Directors. Corporate Secretary. Member of Executive Committee. Charter Board Member of this start-up business that provides Signalling System 7 network services to the telecommunications and wireless industry. Current annual revenues exceed \$20 million.
- ♦ **Oregon Telco Services, Inc.**
1985 -- 1992
Member, Board of Directors. President, 1985 - 1991.
- ♦ **Oregon Telco Investments, Inc.**
1989 -- 1992.
Founder, President & member of Board of Directors.
- ♦ **Oregon Independent Telephone Association**
1983 -- 1992.
Member, Board of Directors. Member and Chair of numerous committees.
- ♦ **United States Telephone Association**
1983 -- Present.
Associate Member.
- ♦ **National Telephone Cooperative Association**
1983 -- Present.
Associate Member. Past Chair of Futures Committee.

Other Experience

- ♦ **Metropolitan Exposition/Recreation Commission**
1988 -- 1994
Member, Board of Directors. Oversee \$26 million budget operating Portland's Memorial Coliseum, Oregon Convention Center, Portland Center for Performing Arts and Civic Stadium.
- ♦ **Mt. Hood Economic Alliance**
An economic development joint venture between Clackamas County and Hood River County to manage Oregon Lottery funds targeted toward developing family wage jobs for Oregon residents.
1993 -- Present
- ♦ **Portland State University - Institute of Portland Metropolitan Studies**
1992 -- 1993
Member, Board of Governors.
- ♦ **Clackamas County Elected Officials Compensation Committee**
1990 -- 1995
- ♦ **Clackamas County Blue Ribbon Committee on Governmental Services**
1988 -- 1990
- ♦ **Clackamas County Economic Development Commission**
1982 -- 1988
- ♦ **City Club of Portland - Task Force on Regional Government**
1986 -- 1988
- ♦ **Redland School Board**
1983 -- 1987
- ♦ **Tri-City Chamber of Commerce, Board of Directors**
1986
- ♦ **Clackamas County Planning Commission**
1976 -- 1982

AGENDA ITEM 8.1
Meeting Date: Thursday, April 27, 1995

INFORMATION ITEM

General Update on Transit Oriented Development (TOD) Activities.

**METRO**

DATE: March 31, 1995

TO: Tom Walsh, Bob Post, and David Calver

FROM: *AC* Andrew C. Cotugno
Planning Director

SUBJECT: Progress Report - TOD Implementation Program

We appreciate the meeting this week with Tri-Met staff including Bob Post, David Calver, Sharon Geraci and Phil Whitmore.

This memo is to supplement that meeting and provide an update on progress made to date on a number of separate activities designed to create a Transit Oriented Development Program. The announcement last week in Portland that FTA will now categorize as eligible a number of joint development activities that it has been reluctant to fund for the past dozen years was an important building block in creating that program.

The Portland region has long recognized the importance of the land-use/transportation link to increase the effectiveness of its light rail projects. There has also been a growing awareness that good transit supportive development will not result automatically from constructing the track and station. Nor will land use plans alone be enough to implement the kind of TODs consistent with an evolving regional vision. What is lacking is a full program that will ensure that some regionally significant TOD demonstration projects are undertaken and that the development tools necessary for this effort are in place.

Metro has been laying the foundation for a TOD implementation program through a series of activities. We appreciate Tri-Met's loan of Phil Whitmore for technical support to assist Metro in establishing an implementation program. A number of important steps have been taken to date. They are (in chronological order):

*I. Request for Capital Funds to Implement TODs - This to include two components:
Land Acquisition and Site Improvements*

A. Land Acquisition Regional Revolving Fund

About 16 months ago, Metro submitted two requests - to be considered for STP flexible funds - as part of the region's Six-Year Transportation Improvement Program. (STP flexible funds allow transportation dollars to be expended on any transit-eligible activity. Two little known provisions of the Federal Transit Act, Sections 3(a)(1)(D) and (F) allow for site acquisition and site preparation/improvements of the development project to be eligible under certain conditions.)

- ▶ The first request — \$10M — was for a regional revolving fund to acquire development sites at transit stations.

This program is to establish a Regional Revolving Fund for the purpose of assembling development sites. As the sites are sold or leased to private developers, the monies are returned to the Regional Revolving Fund for additional site acquisitions. The Siegel Report of 1992 indicated the need for this fund.

Assembling development sites and then selling or leasing them to private developer(s) with specific conditions for design and construction is a proven public-private partnership tool. This public process of acquisition and the subsequent competitive offering of the property places the development into the hands of capable developers who are willing and able to implement a TOD. Despite the documented need for TOD implementation, no program that uses land acquisition and sale/lease back to private developers specifically to encourage transit sensitive development has ever been established in the region.

B. TOD Implementation Site Improvements Fund

- ▶ The second request — \$5M — was to provide a range of site improvements and site preparation for development projects adjacent to transit stations.

This fund would be separate from the revolving fund and would be expended on capital improvements for TODs. Unlike the Acquisition/Revolving Fund, these monies would not be returned to a revolving fund for a different project.

These two requests were part of the overall transportation improvements package being considered by the region and were included in several public hearings. These two possible programs attracted considerable support from regional interest groups concerned about the future direction of growth in the region. The disposition of these two requests was to allow them to become eligible for the \$7.4M Alternative Mode Reserve program item contained in the draft of the Six Year Transportation Plan.

Implicit in establishing such a TOD implementation program are a number of issues involving questions of eligibility with the Federal Transit Administration (FTA). As part of the overall effort to establish a program, Metro began to resolve key eligibility issues and raised these questions formally in a letter to the FTA Administrator, Gordon Linton.

II. Letter to Linton

More than a year ago, Grace Crunican, Deputy Administrator for FTA, encouraged me to press FTA on issues of eligibility for TOD development, particularly as these issues could be worked through the Administration's desire to create a Liveable Communities Initiative. Grace asked us to begin a dialogue with FTA, with written questions and arguments to form the basis of eligibility interpretations that could become the guidelines for capital programs.

Accordingly, last summer we presented FTA's Administrator, Gordon J. Linton, with a letter delineating a number of eligibility issues and included a documented discussion to provide the basis for policy guidance on these issues. FTA responded with a short letter that indicated its willingness to provide written answers to these questions. This in itself was important, for it signaled a departure in central office's attitude toward the priority and eligibility of certain FTA expenditures for capital programs for TODs.

In early November, we were invited to Washington to meet with Ed Thomas, Chief of FTA's Capital Development Division. This meeting went well, and we were asked to place our questions within specific project examples. A few days later, Phil and I had a lengthy telephone conference call with the FTA offices in Washington and Seattle and with Chuck Graves, consultant to FTA on those matters. This call focused on the problems that FTA will encounter in establishing a program. Again, we felt fortunate to be asked questions that ranged beyond our own projects. FTA then asked that we respond to questions raised in both the November 4 meeting in Washington and the conference call. This resulted in a letter to the FTA, dated November 16.

III. November 16 Letter

This letter attempted to qualify a number of program elements in possible projects:

- ▶ Four CMAQ projects were used, including 172nd and East Burnside Housing, Gresham Central, Murray West, and Belmont Dairy.
- ▶ Two other projects, Civic Station and 122nd & East Burnside, were used to round out the six examples requested by FTA.
- ▶ In addition, issues for the broader program were addressed in eight questions.
- ▶ Finally, we added additional arguments and documentation to our earlier case (6/28/94) that acquiring the development site at the station should be an eligible FTA capital expenditure.

IV. *FTA's Answer of March 15*

FTA's long-awaited answer came March 15, both as a letter response to my June 28 letter and as a legal opinion. Both were signed by FTA's General Counsel, Berle M. Schiller. These two signed documents provide important guidelines for allowing FTA expenditure for certain capital expenses for joint development. In fact, these guidelines are the first to be provided on joint development in fourteen years — since the rescission of the Urban Initiatives Program guidelines in 1981.

It was significant that FTA chose Portland to announce these guidelines because it recognizes this region as a national leader in forging the transit/land use link. In a very real way, everyone in the region who has worked on furthering the concept of the beneficial impact land use can have on operating a transit system should share in the credit for this break-through with FTA. *Also noteworthy is that no political capital was expended to bring FTA to this point.*

We shall continue to work with FTA in defining the areas raised in the November 16 letter; they have pledged to answer that letter in writing.

The timing of FTA's March 15 answer was fortuitous because the deadline was near for submitting nominations for use of the \$27M of the 2040 Implementation Fund.

V. *Application for \$7M for the TOD Implementation Fund*

This application by Metro is to establish a Regional Revolving Fund for site acquisition of a TOD or TODs and up to \$1M for site preparation and site improvement for those TODs. This application supplants the previous two applications discussed in paragraph one. The idea is to establish a fund to acquire development sites physically or functionally connected to transit stations, then sell or lease to a private developer with specific conditions for development. The proceeds from the sale or lease will then be returned to the revolving fund for more projects.

It appears that for the first time in more than a dozen years the climate is right for a program definition for TOD that may use FTA eligible capital expenditures. We are fortunate to have been included in the policy formation stages of this national directive.

VI. *TGM Grant for TOD Implementation Program*

Metro was recently awarded a *Transportation and Growth Management Program* (TGM) grant for support services and activities for designing a regional TOD program. The grant will provide a number of work products including criteria for project selection, implementation entity, site(s) selection analysis, environmental survey, and others. The intention is to bring a program up to speed and be prepared to begin a TOD demonstration project(s) to support transit development projects. For the past dozen years, FTA has ignored the applicability of Sections 3(a)(1)(D) and (F) or has denied interpretations that would allow this section of the Act to be utilized for transit supportive development. However, the timing appears advantageous to pursue a real program initiated here in the Portland area to help define federal eligibility issues.

An additional challenge of the TGM study will be to create a program responsive to regional growth and transit needs while fully involving the local governments — including their decisions on land use designations.

The current status of the TGM grant is that an RFP was issued and the joint firms of Fletcher Farr Ayotte and Stephen Siegel & Associates were selected. This contract, issued by ODOT, is underway and must be completed by June 30.

Another TGM grant may become available to complete environmental clearances and other paperwork precedent to site acquisition.

To be successful, this effort will require a full collaborative effort among Tri-Met, Metro, local governments, and regional interest groups. Bob Post's participation on the Steering Committee is needed and requested. This will ensure Tri-Met's involvement and continuity through a number of meetings in the coming months to guide this TGM study. The next meeting is April 14, 10:00 am, at Metro headquarters.

These efforts of requesting funds for a TOD program, the request to FTA for eligibility of certain TOD implementation activities, the watershed FTA positive letter responding to these issues, and the TGM grant represent the best cumulative effort to date for the region to establish a full, successful program for transit oriented development. Your assistance will be needed in shaping these initial steps into a workable program.

cc: Brian Playfair
Dick Feeney
Sharon Geraci
Henry Markus
Kim Knox
Michael Fisher
Joe Walsh
G.B. Arrington
Phil Whitmore



METRO

June 28, 1994

**Mr. Gordon Linton
Administrator
Federal Transit Administration
400 7th Street, NW #9328
Washington, D.C. 20590**

Dear Mr. Linton:

As discussed with both Grace Crunican and Terry Ebersole in Seattle on June 3, Metro is interested in areas of eligibility for livable community type development projects through the use of STP, CMAQ and other federal transportation grants. This letter is intended to discuss use of these federal transportation grants on eligible project elements to assist in fostering transit supportive development. Guidance on the questions posed in this letter will be useful, whether or not the Congress earmarks Section 3 funds for the Livable Communities Initiative.

As part of the region's Six-year Transportation Improvement Program update, Metro has proposed a program locally that will utilize STP funding for implementation of Transit-Oriented Development (TOD's) and has also programmed \$3.5 million of CMAQ funds for this purpose. The purpose of this program is to encourage transit supportive mixed-use neighborhoods at selected transit stations. Based on the preliminary information we've seen, this program is entirely consistent with FTA's proposed Livable Communities Initiative. The "TOD Implementation Program" envisions the public acquisition of property directly adjacent to an LRT station (the transit supportive livable community development site) and the sale or lease of the property to the private sector for construction of the private development within the TOD. Funds from the sale or lease of the development site would then be utilized to establish a "revolving capital fund" to maintain an ongoing transit supportive development site acquisition program. It is our contention that this activity involving the acquisition of a development site adjacent to a transit station is eligible for ISTEA flexible funding. We also believe that this proposed expenditure is a prudent and efficient use of scarce federal transportation dollars.

We believe the goals and public purposes contained in this proposed expenditure of transportation capital funds are consistent with FTA's proposed Livable Communities Initiative; however, Metro is using its own initiative to foster projects utilizing available flexible federal transportation dollars for these transit supportive development

purposes, rather than relying entirely on funding from your forthcoming program.

We are writing to you at this early stage of program definition in order to clarify FTA's current policy on these types of eligibility issues particularly as it applies to existing federal programs such as STP flexible funding and CMAQ. Clarification from FTA will directly assist Metro in defining the proposed TOD Program as a site specific transit supportive development project or series of projects. The areas in which we seek FTA administrative direction are outlined in the eight following questions:

1. Will the current FTA Administration allow the use of FTA capital funds for property acquisition of a project development site that is physically connected to an LRT station as an eligible expenditure?
2. After the property is sold or leased to a private developer, may the proceeds be utilized again for purchase of an additional development project site, providing it, too, is physically connected to yet another LRT station?
3. For technical purposes, in a transit supportive development project, can the disposition of property to a private developer be treated as utilization of a statutorily eligible project element of a development project, rather than as disposition of surplus property?
4. Can the value of the sale or lease of the property to a private developer be based on a "re-use" appraisal, which takes into consideration extraordinary development costs of a transit supportive development project, rather than an "acquisition" appraisal? Such extraordinary costs may include additional costs associated with creating a more dense, compact development sensitive to transit as compared to more conventional, less intense development that may not be as transit friendly.
5. If the federal definition of the project is only site acquisition, will federal cross-cutting requirements apply to privately funded project elements, other than those federal requirements necessary for acquisition of property?
6. If the transit supportive development property is disposed of to a private developer, will FTA allow a long-term subordinated ground lease?
7. May the local agency utilize an FTA approved grant to participate in the financing of building improvements of the transit supportive development project?
8. Are other project elements such as site preparation and site improvements eligible to assist in inducing transit supportive development, whether or not associated with property acquisition described in item 1 above?

Background

The importance to this region of a land use/transit supportive development program supported by a sustainable source of capital funds cannot be overstated. The benefit to the Eastside MAX, to the Westside Project, and to the South/North Corridor will be significant in terms of induced ridership, will create a more cost-efficient transit system, and will improve the quality of neighborhoods. Independent studies conducted by FTA in the past indicated that capital funding for transit supportive development projects was 8-14 times more cost effective than funding for more conventional transit projects such as new-rail starts or extensions of existing lines (Keefer, attached). In addition, other studies, most notable the Urban Land Institute's landmark publication, "Joint Development, Making the Real-Estate-Transit Connection" have underscored the necessity of implementation programs in order to achieve transit supportive neighborhood development: "In short, practitioners are beginning to realize that joint development is not an inevitable result of the establishment of transit facilities. Rather, the successful implementation of joint development depends upon initiatives taken by the public and private parties."

The questions raised earlier will now be explored in detail, complete with supporting arguments, documentation and background on the issue, where appropriate. As stated earlier, Metro's TOD Implementation Program would acquire transit supportive development sites directly adjacent to an LRT station. The development project would be "physically and functionally connected" to an LRT station. The property would then be sold or leased in parcels, with specific restrictions and conditions, to a private developer(s) for construction of a TOD/livable community project. The proposed development project would create new ridership including reverse flow and non-peak demand ridership that would not otherwise exist. Therefore, it would "enhance the effectiveness of an existing transportation system." No portion of the FTA/ISTEA flexible funding would be used for the construction of the private buildings themselves.

1. Will FTA approve expenditure of capital funds from FTA/ISTEA flexible funding for acquisition of a transit supportive development site that is physically connected to an LRT station?

Supporting Discussion - Our argument begins with the fact that ISTEA flexible funding allows for "(2) capital costs for transit projects eligible for assistance under the Federal Transit Act..." (FTA, ISTEA, Flexible Funding Opportunities for Transit, p. 16). Our contention is that the Federal Transit Act allows for land acquisition as an eligible expense for transit supportive development for a livable community within the authority granted in Section 3(a)(1)(D). This section of the Act states that "the term 'eligible costs' includes property acquisition...". Some have argued in the past that this section was intended to provide authority for property acquisition of a traditional mass transit facility such as track bed or station, rather than an adjacent transit supportive development site.

Our argument to counter that interpretation is that Section 3(a)(1)(D) of the Federal Transit Act is a special section, enacted into the Surface Transportation Act of 1978 as amended, to enable special kinds of transit projects including transit supportive neighborhood development.

This argument follows that the authority to acquire property for track bed or station is already contained in the Federal Transit Act and would not need a special section authorizing it if that were its purpose. In addition, our research on the legislative history of section 3(a)(1)(D) is that Congress intended for this acquisition authority to be for an adjacent transit supportive development site and not just for the station area. The Congressional Report that accompanied the passage of the Act, "THE FEDERAL PUBLIC TRANSPORTATION ACT OF 1978", Report of the COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS, UNITED STATES SENATE, (Calendar No.788, Report No.95-557), is very clear on this issue:

Section 3(A)(1)(D)

"This provision of the bill would specifically authorize the Secretary to make grants or loans to finance the additional cost incurred in connection with projects for the acquisition of land and the preparation of such land for urban development purposes. These joint development projects would involve the coordinated planning and development of transportation facilities and the adjacent land in order to maximize the economic and social return of the public investment, foster more efficient use of urban land and bring about urban development. Under this section of the act, grants for such purposes would be limited to the acquisition of land and the preparation of such land for urban development purposes which are physically and functionally related to mass transportation purposes but not including the cost of designing or constructing revenue producing facilities not engaged in transportation. Examples of activities which would be financed under this section include: foundation work and the utility capacity that would accommodate both a transportation facility and a non-transportation facility, walkways or tunnels from a transportation facility to a non-transportation facility, open space serving both the transit and non-transit facility, and land adjacent to a transportation improvement but not for the building erected on such land. It is not intended in this section that the Secretary would approve grants or loans for financing structures built on top of or in connection with the transportation facility that are not necessary to the proper functioning of the transportation facility, such as public or private office buildings that may or may not produce revenues."

Our conclusion is that Section 3(a)(1)(D) is explicit in its language to grant authority for the acquisition of "land adjacent to a transportation improvement" for use by a transit supportive neighborhood development project and that such activity is an eligible expenditure of federal transit dollars. Within this type of development project,

acquisition of the adjacent development project site is the federal element of the project definition and the activity is a transportation project providing it is physically or functionally tied to an existing mass transit project and it enhances the effectiveness of that mass transit project.

Additional authority for these kinds of projects is contained in Section 3(a)(1)(F) which allows: "the development of corridors to support fixed guideway systems... and any other non-vehicular capital improvements that the Secretary may determine would result in increased transit usage in the corridor".

2. After the property is sold or leased to a private developer, may the proceeds be utilized again for purchasing an additional transit supportive development project site, providing it, too, is physically connected to another LRT station?

Supporting Discussion - FTA may allow the land sale or lease proceeds to be used for an acquisition of another eligible transit supportive development project site, providing it is physically or functionally connected to an existing mass transit project and providing it, too, enhances the effectiveness of the mass transit project. While there are no known written regulations governing this activity currently in place at FTA, evidence for this eligibility can be found. At a prior time (February 18, 1981), FTA enacted written regulations for governing the expenditure of the Urban Initiatives Program, which was a federal program designed to fund and implement projects within the authority of Section 3(a)(1)(D). While these regulations are no longer in effect, they are instructional in that the language and authority granted by 3(1)(a)(D) has remained unchanged up to the present. These regulations state that "(f) If property is sold, the entire proceeds of the sale up to the amount of the combined UMTA (FTA) and local investment must be applied to finance other existing or proposed capital project elements that would be eligible for assistance under Section 3 of the UMT Act...". (see Federal Register/ Vol. 46, No. 12, Monday, January 19, 1981/ Rules and Regulations 5823, Par. 642.31 Participation in Proceeds Derived from UMTA (FTA) Investment). Such projects could include acquisition of a transit supportive development project site. Paragraph (g) of these same prior regulations contains similar provisions for lease proceeds.

3. In a transit supportive neighborhood development project, can the disposition of property to a private developer be treated as utilization of a statutorily eligible project element of a livable communities development project, rather than as disposition of surplus property?

Supporting Discussion - The authority granted in Section 3(a)(1)(D) for development site acquisition is intended to provide a development tool for a public-private partnership. Public site acquisition and sale or lease to a private developer with specific conditions for design and construction is a proven effective development tool. Acquisition of the land and disposition of it through a development agreement for a

transit supportive development project should be treated differently than a simple sale of surplus property no longer needed by the transit agency for conventional transit purposes. If the land sale/lease transaction is an element of a transit supportive neighborhood development project that fosters the objectives of FTA's livable communities, then the sale/lease should be treated as utilization of an eligible project element and should not be subject to sale of surplus property procedures.

4. Can the value of the sale or lease of the property to a private developer be based on a "re-use" appraisal, rather than an acquisition appraisal? (A re-use appraisal is one in which the value is subject to limitations, encumbrances, restrictions, stipulations, conditions and other constraints which will be applied to the property in order to produce a transit oriented development.)

Supporting Discussion - Once the property is qualified as an element of a transit supportive livable communities development project, it should have the full use of the acquisition/sale/lease development tool. Such full use should include the ability to utilize a re-use appraisal as a basis for determining value. This is important since frequently, in order to create a transit supportive development that is more intense, the developer may incur additional costs. These costs, often referred to as "cost penalties", may include the costs of a more dense building type in a less dense environment and include structuring the parking within the development, either by platform or modified platform type construction, costs of increased size of foundations and stem walls, fire systems and other costs the developer may incur.

At the same time, while it is important to transit to accelerate density prior to the time that market economics would otherwise dictate, the rents may not necessarily support the increased costs if other facilities in the area are available without the cost penalties. While there most certainly is a demonstrated public purpose and benefit from the increased density at the transit station, these increased costs will place an unnecessary burden on the private developer and make the proposed development economically infeasible. The re-use appraisal should be utilized in such instances to take into consideration the cost penalties, if any, of the documented public requirements that generate a more dense project. This re-use appraisal should only be used when the project qualifies as a transit supportive development project, is physically and functionally linked to the transit station and enhances the effectiveness of the transit system.

In other instances, a desirable use may be priced out of the market. As an example, a day care center next to the station could have beneficial results in improving the environment of the transit patron, livability for the neighborhood, and in increasing ridership. However, the property on which it is to be located may be high value commercial or industrial land, preventing the economic feasibility of the day care center. A re-use appraisal, in which the appraisal is limited to the value of a day care center, will allow the local agency to proceed with the project and still maintain the

level of objective third party analysis required of an appraiser.

5. If the federal definition of the project is only site acquisition, will federal cross-cutting requirements apply, other than those required for acquisition?

Supporting Discussion - A project in which the federal definition includes only site acquisition of a transit supportive development project should have only the cross-cutting requirements of acquisition (Land Acquisition 49 CFR Part 24). Cross-cutting requirements of construction projects such as Buy America, Davis Bacon and others, should not apply if there is not a construction element in the federal project definition, even though the project will eventually result in housing, office, or retail consistent with livable communities objectives.

6. If the transit supportive development property is disposed to a private developer, will a long term subordinated ground lease be allowed by FTA?

Supporting Discussion - In some instances, it is desirable for the local agency to enter into a long term ground lease rather than a sale to a private developer. For financing purposes, a subordinated lease is much preferred by lenders to a non-subordinated one. In fact, it is extremely difficult to obtain financing for a project on an unsubordinated ground lease.

7. May the local agency utilize an FTA approved grant to participate in the financing of building improvements of the transit supportive development project?

Supporting Discussion - There is more flexibility and a given project may be more "doable" if the federal grant can be invested directly into the building improvements, rather than in a specific element such as pedestrian ways, or infrastructure.

8. Are other project elements such as site preparation and site improvements eligible to assist in inducing transit supportive development, whether or not associated with property acquisition described in item 1 above?

Supporting Discussion - In addition to the above questions relative to acquisition and disposition of property as a development tool to assist in inducing transit supportive development and the issue of direct investment into a private developer's building, we have several areas regarding site preparation and site improvements as an FTA eligible expenditure that we wish to explore with you. This letter seeks clarification on areas that we believe can be specifically eligible elements of a possible transit supportive livable communities development project. It is our contention that site preparation and site improvement of a transit supportive development project are eligible activities for FTA transit capital expenditures, when that development project is physically and functionally related to a transit station and it enhances the effectiveness of the mass transit project. Your clarification is requested on the following activities that we

believe are eligible with a project with the above cited characteristics: demolition of existing buildings, site preparation, installation of minor streets, sidewalks, lights, pedestrian connections, open space, plazas, building foundations and utility components for the development project. In addition, the transit facility improvement should be allowed to be constructed so that the facility forms the shell of a potential private use such as day care center or related commercial activity, provided the buildings' improvements that actually constitute the private use are not grant funded.

The authority for these project elements is contained in Section 3(a)(1)(D) of the Federal Transit Act which states, "The term 'eligible costs' includes property acquisition, utilities, building foundations, walkways, open space..." Prior rules and regulations written for Section 3(a)(1)(D) further delineated the eligible elements which included "4) Foundations and substructure improvements for buildings over transit facilities, 5) Pedestrian connections and access links between mass transportation services and related development, 6) Other facilities and infrastructure investments needed to induce significant private investment..." (Federal Register, Volume 46, No. 12, January 19, 1981, p. 5823.) In addition, Section 3(a)(1)(F) allows for "the development of corridors to support fixed guideway systems... and any other non-vehicular capital improvements that the secretary may determine would result in increased transit usage in the corridor." Concerning the all-important issue of whether these expenditures must be done as part of a station or track as some have argued in the past, or if the Act provides authority for capital expenditure to directly assist the development project, the legislative history of Section 3(a)(1)(D) is useful. This document states that these 3(a)(1)(D) type development projects would involve the "planning and development of transportation facilities and the adjacent land in order to maximize the economic and social return of the public investment, foster more efficient use of urban land and bring about urban development". Under this section of the Act, grants for such purposes would be for "the acquisition of land and the preparation of such land for urban development purposes which are physically and functionally related to a mass transportation project..." This document listed examples of eligible activities and clearly noted that the eligible project element was to be for both the transportation facility and the non-transportation facility: "foundation work and the utility capacity that would accommodate both a transportation project and a non-transportation facility, walkways..., open space serving both..." (See the Federal Public Transportation Act Of 1978, Report of the Committee on Banking, Housing and Urban Affairs, United States Senate, Calendar No. 788, Report No. 95-857.)

We also believe that related areas that form the physical and functional link between the livable community and transit, such as a plaza, should be eligible when that plaza functions as a "pedestrian connection and access link between mass transportation services and related development". A plaza project that did not physically and functionally link the development to transit would not be eligible.

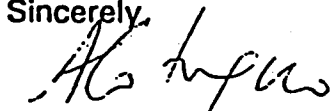
Finally, your clarification is requested as to what types of federal transit grants may allow for these project elements. We believe that both ISTEA flexible funding and

CMAQ should allow for the above stated expenditures. The basis for eligibility for ISTEA flexible funding (STP) is indicated in the guidebook, "Intermodal Surface Transportation Efficiency Act of 1991, Flexible Funding Opportunities for Transit," FTA, Washington, D.C., p. 10: "STP Project Eligibility ... opportunities for Transit under the 80% General Purposes Apportionment include all projects which might otherwise be eligible for funding under current FTA grant programs excluding FTA Sec. 9 operating assistance." Our argument is that the FTA grant program eligibility includes programs funded within the authority of Section 3(a)(1)(D), which as discussed earlier allows for site acquisition, demolition, site preparation, and site improvements when the development project is physically and functionally connected to a conventional transit project and when the development project will enhance an existing mass transit project.

The case that these activities are eligible under CMAQ authority is made as follows: The FTA publication, "Intermodal Surface Transportation Efficiency Act, pp. 20-21, specifically notes the construction of pedestrian and bicycle paths as eligible. The other elements discussed above are eligible as "other projects and programs" referenced if FTA "determines that they are likely to contribute to the attainment of a National Ambient Air Quality Standard." Therefore, we believe that all of the eligible activities discussed above are eligible with CMAQ, provided that the transit supportive livable communities development project is likely to contribute to attainment of air quality.

We appreciate this opportunity to clarify these issues with you as Metro's application progresses through the Regional process. We believe it is entirely appropriate to discuss these issues with you early on, since the answers we seek will clearly reflect the current administrative direction for FTA - one that fully embraces the valuable contribution land use/transit supportive development can bring to transit.

Sincerely,



Andrew C. Cotugno
Planning Director

cc: Terry Ebersole, FTA Region X
Grace Crunican, Deputy Administrator



METRO

November 16, 1994

Ed Thomas
Chief Capital Development Division (TTS-11)
Federal Transit Administration
400 Seventh Street, SW
Washington, D.C. 20590

Dear Mr. Thomas:

We sincerely appreciate the opportunity you have provided for us to participate in defining eligibility issues related to transit oriented development. The meeting of November 4 provided a high level of focused energy and intellect and we are confident that good direction will result from this dialogue.

As we stated in the meeting, the Portland region has included for consideration in the Six Year Transportation Program two candidate development programs. The first is for \$10 million to purchase development sites that are physically and functionally connected to transit. The program income from the sale or lease proceeds would be applied to purchase separate additional sites for other development projects with similar criteria. For our purposes, this would function as a regional revolving fund from which additional projects are commenced as sale/lease proceeds are realized. All development projects would have to meet the standard that they are physically and functionally connected to a transit system and that they enhance the effectiveness of an existing transit system in place or under construction. The second program that has been proposed for the SYTP is for funding of \$5 million for site preparation and site improvements for TOD projects. It is likely, due to budget constraints, that the actual funding levels may be reduced even if the programs are approved by the region.

There is stiff competition for the region's limited transportation dollars. A serious eligibility question mark placed beside any specific project or program will result in its virtual elimination from the region's Six Year Program. The process leading to a final decision on the transportation program has been on-going for more than a year, and will begin to conclude in mid-January of 1995. The opportunity to fund a TOD Implementation program presents itself now, and the questions that need addressing are questions of eligibility for use of formula ISTEA funds, not of requesting FTA discretionary funding. It is our intention that, with the eligibility issues favorably

resolved, the Portland region will be in a position to fund TOD Implementation from STP Flexible Funds and CMAQ. We note that the excellent FTA brochure, "Livable Communities Initiative," which we received on our recent visit states that "The sources of federal funds for projects reflecting the Livable Communities Initiative principle are: ... the Surface Transportation Program (STP) and Congestion Mitigation and Air Quality (CMAQ) funds..."

We have enclosed for your information the TOD Implementation funding requests for the two programs as they were presented to the region for consideration in the SYTP. At this time, the two programs are defined in a generalized manner. It is our hope that FTA can provide eligibility guidance now so that the programs can move to approval in the region as part of the Transportation Program. We fully understand that once the region approves the program, one or more site-specific projects will be defined and submitted to FTA for final approval. In this manner, providing guidance to us on eligibility issues at this time will not foreclose FTA from making a final judgement regarding a specific project.

It is our understanding that of the eight questions posed in our letter to Gordon Linton of June 28, FTA is prepared to respond to questions 2-8, which would include all issues except the issue of outright purchase of property for development projects adjacent to transit stations. In addition, in the conference phone call of November 8, FTA indicated that it was prepared to answer questions on use of existing transit property originally purchased with FTA capital grants, to now be utilized for transit supportive development projects. Based on the meeting and the conference call, we also understand your desire to place the eligibility issues within a specific project context so you're better able to understand the direction we will be taking once the eligibility issues are resolved. In order to accommodate your request, the suggestion was made that the TOD projects for which CMAQ funds are intended to be used be the specific examples we provide to you. As we indicated, some of the projects will not test the boundaries of program definitions and project elements needed for an effective TOD Implementation program, since the projects were prepared with the understanding that areas of unresolved eligibility could jeopardize a project, particularly one that was time sensitive.

The seven remaining questions, other than property acquisition, contained in our letter of June 28 are recapped as follows:

2. May land sale and lease revenues be utilized again for additional property acquisition for an additional TOD project(s)?
3. May the property lease/sale be categorized as utilization of a project element of a transportation project, rather than disposition of surplus property and the property disposition and use of the funds not be subject to surplus property rules?

4. May a re-use appraisal be utilized to determine the lease/sale value?
5. If the federal element in a project is only property, may only property acquisition cross-cutting apply, and not construction cross-cutting?
6. May the local agency use a long term subordinated ground lease?
7. May an FTA approved grant be used for direct investment in the revenue-producing portion of the building?
8. May other project elements such as site preparation and site improvements be utilized for the transit supportive development project, even when these elements clearly serve the development project?

As indicated in the recent meeting, the region approved a program for \$3.5M of CMAQ funds for TOD projects. Six specific projects have been recommended for funding. These questions of eligibility will now be applied to four of the CMAQ projects (2 of the 6 CMAQ projects mentioned in the meeting are being redefined at this time) and two projects that are not CMAQ that will utilize existing property purchased with federal funds for a transit system. It will be helpful to us if the questions can be answered both from a standpoint of use of CMAQ funds and use of STP Flexible Funds. As indicated in the meeting, these projects generally tend toward including eligible public elements that have already received clarification on eligibility (such as streets and sidewalks). From our point of view, in order to establish an effective TOD Implementation Program, it is necessary to be able to interact with the private development community with a number of development tools in order to achieve public objectives and to be able to respond to a variety of specific opportunities that will be advantageous to transit. In certain locations, most of the public infrastructure is in place and these STP and CMAQ capital grants will be useful in increasing the density of a project, the "connectivity" to transit, and improving the projects' economic feasibility. Therefore, it is important that you provide guidance consistent with the issues raised in our June 28 letter and that guidance not be limited to the examples at hand.

Six Specific Projects

1. 172nd and East Burnside Housing - Project Description: This 42-unit housing project is being designed to demonstrate a building system that will yield substantially higher densities (57 units/acre vs. 20 units/acre for typical suburban multi-family development). This higher density is in itself a public purpose because of increased ridership for transit and attainment of air quality and congestion goals of CMAQ. The parking ratio for the project will be reduced from a typical 2.0 - 3.0 spaces per unit down to 1.5 spaces. Located on land physically abutting a Banfield LRT station, the project consists of 3-story buildings with "tuck-under" parking. Two wings of the

building are separated by a driveway, and a pedestrian way constructed above the drive connects to the station. Proximity to Transit - The project abutts the east platform of a Banfield LRT station. In addition, the No.s 23, 25 and 27 bus service is a few blocks to the east. Public Benefits - The low construction cost of the project combined with the high density allows for a very low cost per induced rider - \$1470. The leverage of public dollars to private is very strong - 16:1. Federal Element of Project: This elevated pedestrian way, combined with the "tuck-under" parking are the key elements that allow this project to achieve higher densities. However, this housing system will be more expensive to construct than a typical suburban development of 20 units/acre. Therefore the elevated pedestrian way is the specific element comprising the request for \$100,000 of CMAQ funds. Supporting Discussion: Although an important part of the building system, the pedestrian way should be treated as a "site improvement" or "walkway" and should be eligible under Section 3(a)(1)(D) for either STP Flexible Funds or CMAQ funds. This authority is contained in the law itself which cites "walkways" in the definition of eligible costs. This "walkway" should be determined eligible even if integral to the building, provided it is physically and functionally connected to the station (which it is) and is not part of the "revenue producing" portion of the building (which it is not). The federal interest in the project is the pedestrian walkway and this interest should be protected by an easement or covenant for the expected life of the project. If, at a later date, the walkway were demolished or converted to a housing unit or other revenue producing facilities, then the value of the remaining economic life of the project element that was grant funded would be required to be reimbursed to FTA.

First Question - May the pedestrian walkway be funded as a transportation element utilizing either CMAQ or STP funding even if integral to the building? This question relates to #8 in our letter of June 28.

Other Issues Associated with the Land

Property for the project is comprised of two parcels, a portion of excess Banfield LRT R-O-W and an adjacent 16,000 sq.ft. privately owned lot. Although Tri-Met has executed a Development Agreement for the property with the developer, the land value has yet to be determined, depending on the value established by an independent appraisal. Because of the higher densities and possible cost penalties of the development due to the higher density building system, we believe it is appropriate to utilize a re-use appraisal in determining that value. The re-use appraisal should contain specific instructions and limitations on the development of the property including the limitation that it be used for multi-family housing, the special problems associated with the higher density, and cost penalties due to the fire sprinkler system and such other considerations as specified by the agency in order to achieve transit oriented development. The federal interest in the project is then the special conditions and project elements that yield high density and the direct connection of the development to transit. To the extent that the restrictions and limitations affect the value of the property, then these restrictions and limitations should be placed as

development requirements in the development agreement and/or as covenants, easements or licenses on the deed.

Second Question - *May the transit agency utilize a re-use appraisal in determining the fair market value for the sale of the property purchased with federal funds? This is question 4 in our June 28 letter.*

In addition, the income derived from the sale of the property should be allowed to be utilized for another eligible transit capital project such as an element of another TOD project.

Third Question - *May the disposition of the property to a developer be treated as utilization of a statutorily eligible project element, rather than as disposition of surplus property; and may the transit agency treat the land sale proceeds as program income to be used for another transit capital grant? This is question 3 in the June 28 letter.*

There are public advantages to being certain the adjacent privately owned lot remains available during the entire pre-development period, particularly since a number of issues must be resolved that affect the feasibility of the project. It would be very useful to utilize CMAQ or STP funds to option the adjacent property for the period in which the various public and private elements are being defined. An option for the adjacent lot will cost \$6-10,000. While the June 28 letter did not raise the issue of option fees as an eligible expense (since the more useful development tool of outright purchase of property was requested) recent circumstances have raised that issue.

Fourth Question - *May option fees be an eligible expense of CMAQ or STP Flexible Funds for property adjacent to the transit station for development of a TOD?*

2. Gresham Central Housing Project - Project Description: This 95 unit housing project to be build on 2.7 acres in downtown Gresham will demonstrate a building system of higher densities (34 units/acre) with lower parking ratios (1.5) that will improve the effectiveness of transit. A series of 3 story buildings will be constructed around a 2 level parking facility with the entire development oriented towards a pedestrian promenade linking the housing development to the Gresham Central LRT station one-half block to the east. This building system not only allows a higher density, but also establishes a continuous building facade along Roberts Avenue and along the pedestrian promenade, without the typical interruption of numerous garage door openings. Instead, the continuous building facades with window and door openings onto the street creates definition to the public space and interest to the pedestrian. This design, which reinforces activity on the public areas, creates the opportunity for a pedestrian environment which is more transit supportive. **Location and Proximity to Transit** - The project area is comprised of a .7 acre of LRT R-O-W under a Tri-Met Sale and Development Agreement and a 2 acre parcel owned by the

developer. The site is directly across a 2-lane street (NE Hood Avenue) from the Gresham Central Transit Center which is a multi-modal transit facility consisting of an LRT station and the No.s 4, 9, 23, 80, and 84 bus lines. Public Benefits of the Project - The more dense housing project with a direct connection to the transit station will increase transit ridership, decrease traffic congestion and improve air quality. Daily induced ridership is estimated at 160 transit trips. Cost per induced rider and cost per reduced vehicle trip is very low for a transit capital project: \$1,634. There is a 14 to 1 leverage of public funding to private investment. Specific Areas of Funding Request - The request for CMAQ funds is for two project elements: a pedestrian promenade for \$125,000 to connect the development to the Gresham Central multi-modal station, and a request for \$125,000 to fund a portion of the cost difference between the cost of surface parking and the proposed parking structure. Supporting Discussion - Promenade: CMAQ funds should be able to be categorized as either a highway or a transit project. FHWA and ODOT have indicated that a promenade is not eligible; however, the cost of a conventional sidewalk is. The promenade is an appropriate improvement designed to induce more active pedestrian use of an area, to tie the station to the downtown, to become a design feature of a public-private development project, and to induce a higher transit modal split and more transit usage. It should qualify as an FTA eligible transit improvement. However, at this point FTA has issued no written clarification that such a project is eligible, therefore the FHWA decision that it is not has remained in effect. Time is a factor, since the developer intends to break ground in February - March of 1995. Supporting Discussion - The FTA publication, "Intermodal Surface Transportation Efficiency Act", pp 20-21, specifically notes the construction of pedestrian and bicycle paths as eligible. The promenade also functions as an "access link between mass transportation services and related development" as a 3(a)(1)(D) project (see Federal Register, Volume 46, No. 12, January 19, 1981 p. 5823(5) "pedestrian connections and access links...").

The parking improvement, even when contained within the interior of the building development is also eligible under Section 3(a)(1)(D) of the Federal Transit Act because the development project is physically and functionally related to the transit station and the housing project enhances the effectiveness of the MAX transit system. If the garage were not part of such a development project, then a garage per se would not be eligible under Section 3(a)(1)(D). This parking element of the development project is not a "revenue producing facility" which would have eliminated its eligibility. It will be necessary for the developer to provide a lease, license agreement, or covenant for the useful life of the parking improvements.

3. Murray West - Project Description: This is a neo-traditional mixed-use project to be constructed on 124 acres of vacant land owned by four property owners surrounding the proposed Murray West transit station on the Westside Light Rail line. The project will be developed by two or more developers working within an overall approved master plan and will consist of 1624 housing units of densities ranging from

12 units/acre to 38 units/acre, 525,000 sq.ft. of office, commercial, light industrial, civic (which includes theaters and day care), and support retail. The residential portion of the project will create a population of 4,000 residents. The design will create a transit supportive village complete with storefront-lined small interior streets leading to the transit station and narrow pedestrian oriented streets with housing fronts built close to the sidewalk, linking the residential area to transit. Location and Proximity to Transit - Located 7 1/2 miles west of downtown Portland, the site is west of Murray Blvd. and south of Jenkins Road at the location of a Westside LRT station. Public Benefits - The transit station will be surrounded by a plaza connected to the adjacent retail and housing development. This type of neo-traditional design is expected to yield substantial new transit ridership, reduced single vehicle traffic congestion and improved air quality. An independent traffic engineering firm, Kittleson & Associates, projects a 52% reduction in VMT per capita compared with a traditional suburban development with conventional densities and building orientations. Parking ratios for the housing units are reduced to a maximum of 1.8 per unit from a minimum of 2.0. Parking ratios in the commercial area are reduced from 6 to 8 per thousand down to 4 per thousand. Specific Funding Request - The request for CMAQ funding is comprised of 3 project development elements totaling \$782,000 and an electric shuttle which is not part of this discussion on development project eligibility.

1. Station Area Public Square - 30,000 sq.ft. @ \$400,000. This station square will surround the transit station and serve to directly connect and focus the surrounding private development.

2. Community Market Street - 800 linear feet @ \$121,000. This narrow retail lined street improvement is an integral part of a design attempt to break the mold of typical auto-oriented suburban retail by being designed as an "old-fashioned" main street. The dollar amount reflects approximately 25% of the cost of the improvement.

3. Pedestrian Promenade Streets -

a. North promenade - 1600 linear feet @ \$929,000

b. South promenade - 1200 linear feet @ \$717,000

Request for CMAQ Portion of this promenade street = \$261,000

The promenade street is a narrow, pedestrian oriented street with development fronting upon it that will tie all of the development north and south of the tracks to the transit station. A percent of the funding of the entire improvement or a sub-element of the overall improvements such as the sidewalks, landscaping, street furniture - but not the street paving - is to be funded with the CMAQ grant, depending on FTA direction.

4. Electric Shuttle - In addition, a portion of a public/private electric shuttle system is requested for CMAQ funds. This electric shuttle will provide service

beyond the Murray West development project to major employers such as Nike and Tektronix. There are 6,000 employees beyond a 5 minute walk, but within 1 mile. CMAQ request = \$256,000. The issue of eligibility on the electric shuttle is not part of this request by us for land and capital improvements of development projects.

Supporting Discussion - The station area public square is eligible within the framework of Section 3(a)(1)(D) because it provides a "pedestrian connection and access link between mass transportation services and related development." Authority for this is cited in earlier examples of the pedestrian promenade.

First Question - May the station public square be eligible as an FTA capital project to be funded as either CMAQ or STP Flexible Funds provided it is part of a development project that is physically and functionally connected to transit and the development enhances the effectiveness of the transit system?

In the same manner, the "community market street" is eligible as a 3(a)(1)(D) project because it also functions as an access link, directly connecting the retail activity to the station. Because of the neo-traditional design of this development with the retail fronting onto a narrow street with broad sidewalks, this improvement should be viewed as to its functional intent which is as a pedestrian access link. A conventional street not of this design may not be eligible. FTA should be wary of funding free standing streets, even if of narrow design, since the presence of the building fronts facing onto a street contributes to its pedestrian nature. The pedestrian promenade streets also should be eligible as a component of a Section 3(a)(1)(D) project because they function as pedestrian access links. In the alternative, for both the community market street and the pedestrian promenade streets, the sidewalks, landscaping, and street furniture could be funded, but not the actual curb to curb street surface. In this instance, it would be important for the developer to turnkey the entire improvements and not subject them to construction cross-cutting requirements. In the meeting of November 4, it was indicated that a precedent has been established in turnkey park and rides that were developed by the private sector and sold or leased to transit, in which construction cross-cutting did not apply. This principle should apply here if the developer turnkeys the sidewalks, landscaping and street furniture.

Second Question - May small grid, narrow streets with sidewalks be funded as a transit capital project from either CMAQ or STP Flexible Funds if the street is designed to be lined with building facades so it functions as a pedestrian access link? Third Question - May the developer turnkey construct either a portion of the improvement such as sidewalks and landscaping or the entire improvement including the street paving and not be subject to construction cross-cutting?

4. Belmont Dairy - Project Description: This mixed-use project is an adaptive re-use of an old, long-vacant dairy building close to downtown Portland; and will consist of

75 apartments, a 12,000 sq.ft. grocery, 12,000 sq.ft of specialty shops, a 5,000 sq.ft restaurant, and 5,000 sq.ft. of loft work spaces. Like many urban projects, the existing infrastructure is in place, but the CMAQ funds are needed to offset some of the extraordinary development costs of the project. Proximity to Transit - The project, at the NE corner of 33rd and Belmont, is located immediately adjacent to the No. 15 bus stop. The No. 15 is currently a 12 minute bus corridor; however, it is proposed as an 8 minute corridor in the future. The project is designed so that the entrance to the retail is at the bus stop; the residential entrance is within 100' of the bus stop. Public Benefits - The project will increase transit ridership and reduce the traffic congestion and improve air quality because it is located adjacent to transit service, because of the mixed use nature of the project, and because it is located in an existing city neighborhood. Specific Areas of Funding Request - Like a number of CMAQ applications, the application for funding was for an amount larger than the Regional Committee recommended. The grant funds are to be treated as "gap funding" in which specific components are listed as follows:

- | | |
|--|-----------|
| 1. Utilities and connection fees | \$80,000 |
| 2. Environmental cleanup - asbestos,
PCB cleanup of the building itself
(not soil) caused by machinery
from the old dairy | \$250,000 |
| 3. Pedestrian improvements -
sidewalk surrounding the
building and connected to
the bus stop | \$125,000 |
| 4. Predevelopment consultants | \$90,000 |
| 5. Building Permits | \$61,000 |

INITIAL FUNDING REQUEST = \$606,000

AMOUNT RECOMMENDED BY COMMITTEE = \$300,000

Supporting Discussion - The utilities and connection fees for the development project should be eligible because the project is physically and functionally connected to transit and it will enhance transit by increasing ridership. Utilities are specifically eligible under Section 3(a)(1)(D): "The term 'eligible costs' includes... site preparation, utilities..." Also the legislative history specifically cites utilities as an example of eligible activities: "Examples of activities which would be financed under this Section 3(a)(1)(D) include: foundation work and the utility capacities that would accommodate both the transportation facility and the non-transportation facility..." (see the Federal Transportation Act of 1978, Report of the Committee on Banking, Housing and Urban Affairs, United States Senate, Calendar No. 788, Report No. 95-857).

First Question - May the utilities of the development project be eligible as an FTA capital expense?

The environmental cleanup is eligible within the authority of Section 3(a)(1)(D) as a "site preparation" expense specifically authorized in the Act. The cleanup in this project is limited to the existing building and not the soil; nevertheless, because of the nature of the development project as an adaptive re-use, this activity should be considered, as site preparation.

Second Question - May site preparation expenses for the land or as in this case, for the building be an eligible expense? The pedestrian improvements are eligible as stated in earlier examples that include the description and discussion of the four CMAQ projects. Predevelopment studies are an eligible expense of a development project. The prior Rules & Regulations of 1981 governing 3(a)(1)(D) state that eligible project costs are to include "1) Site design, engineering, and environmental analysis as appropriate. 2) Real estate packaging for a specific UMTA capital project including assessment of market potential, preliminary design and engineering, estimates of operating income and expenses, capital costs, and negotiations to secure financing, developers and prime tenants." (See Urban Mass Transportation Administration, 49CFR Final Rule, Federal Register, Vol. 46, No. 12, Monday, January 19, 1981, Rules & Regulations, p. 5823.)

In addition to the four CMAQ projects discussed above, we are proposing to implement two development projects that are to be constructed on property owned by Tri-Met purchased with an FTA grant for transit purposes. These are described as follows:

5. Civic Station Redevelopment Project - Project Description: This mixed use project located at SW 18th & Morrison consists of 100 units of housing with 8,000 sq.ft. of ground level retail. The 5-story project will incorporate below-ground parking and this building system will yield substantial densities - 200 units per acre. In addition, the project features a very low parking ratio of .8 spaces per unit that will increase transit use. The site is a portion of the property acquired by Tri-Met for the Westside LRT. **Proximity to Transit** - The project is located between the east and west bound station platforms of a proposed Westside light rail station on the segment now under construction. **Public Benefits** - The very high density housing project located adjacent to transit, combined with the very low parking ratio will have a positive impact on transit ridership and will result in reduced traffic congestion and improved air quality. Metro's modeling of this project indicates a 100% reduction in traffic congestion as compared to a typical suburban development, due to the above factors and because of its downtown location and proximity to services. **Specific Issues of Eligibility Questions** - This project is to be built on property acquired by Tri-Met as part of the Westside LRT Project. There are substantial cost penalties associated with this project due to the high densities, tight site configuration, and underground parking. In order to make this project economically feasible, a re-use appraisal is appropriate. Such re-use appraisal should take into consideration the use limitations (major portion for housing), the added costs associated with development density, and the

additional costs of below ground parking in making its determination of value. The property value should be allowed to incur a substantial write-down in order to accommodate the cost penalties of the project. It is not inconceivable, that this re-use appraisal could indicate a value of one dollar.

Question one - May a re-use appraisal be utilized to establish the fair market value of this property? This is question 4 in the letter of June 28.

There are other elements of the project which may be funded in the future, including:

1. Building foundation retaining wall - this retaining wall forms 2 sides of the parking facility and is the building foundation nearest to the transit station. \$210,000
 2. Site preparation/excavation of the site. \$73,000
- TOTAL = \$283,800

Supporting Discussion - Both the building foundation and the site preparation are specifically eligible in the 3(a)(1)(D) statute: "... eligible costs include site preparation..., building foundations..." The project is physically and functionally connected to the proposed civic transit station and will enhance the Westside by increased ridership.

Question Two - May the building foundation/retaining wall and site preparation/excavation of the development site be eligible for CMAQ or STP Flexible Funds? These capital costs could possibly be included in a subsequent application for either of these funds.

In addition, the piers and platform that support the building above the parking should be eligible, since they create the opportunity for the dense building system which benefits transit, reduces VMT and improves air quality. Two options should be considered in this discussion. The first would build a portion of the development project over the station and track and the issue of eligibility involves the cost of the piers and building platform to accommodate this private development. The second involves construction of the building on a platform built on the property remaining from the station construction. This question involves the eligibility of this "density platform" in order to accommodate the higher density design of the development project. These piers and platform should be eligible even if they are not constructed over the track.

Question Three - A) May air rights piers and platforms to support a private development project which is build over the track or station be an eligible expense? B) May density platforms built over any portion of the site in order for the project to be of substantially higher densities be allowed as a capital expense of either STP Flexible or CMAQ funds?

For this project, Tri-Met intends to contract with the Portland Development

Commission, which will in turn, enter into an agreement with a private developer. PDC will utilize either a development and sale agreement or a long term subordinated ground lease as the development tool with the private developer.

Question four - May a long-term subordinated ground lease be utilized for disposition of the property? (No portion of the transit property to be utilized for the LRT track and station platform will be subordinated, so "continuing control" of the original transit asset will be kept intact.)

66. 122nd & East Burnside Development Project - Project Description: Tri-Met owns 4.2 acres of property at the SE corner of this LRT station currently used as a park and ride, and approximately 1 acre held for possible future expansion. Tri-Met has executed a Memorandum of Understanding with a private developer to explore prospects for a mixed use project including housing, retail and office to replace all or a portion of the park and ride. An independent feasibility analysis is being undertaken by Economic Research Associates for the development project. The park and ride currently is under-utilized; recent surveys indicated only 57% of the parking spaces being used. Discussion of Issues - If the mixed-use project is feasible, it is in the intention to propose a development project on this site. The land asset would then be converted from one serving transit ridership by a park and ride facility to one contributing higher ridership through a joint development project. The standard that will be applied is that the joint development ridership must exceed the existing park and ride ridership or a combination of a smaller park and ride plus the joint development project must exceed the existing ridership derived from the park and ride. The sale/lease proceeds will be treated as program income to be used for other transit capital projects. Because the federal interest will be transferred from the park and ride to the joint development project, it should not be necessary to reimburse the original grant for the parking improvement for the park and ride or to treat the sale/lease as surplus property. Public Benefit - There will be a demonstrated public benefit of increased transit use and decreased traffic congestion. In addition, the transit use, especially that generated from the retail and office will now occur "all day" as opposed to peak hours as created by the park and ride. The "all day" aspect of the new ridership will create a more efficient transit system since the increased ridership will be spread throughout the day and be accommodated by the existing rolling stock.

Questions:

1. May the property currently being utilized for a park and ride be converted to a livable communities development project, providing the development is physically and functionally connected to transit, creates more transit ridership than the existing park and ride, and provides more efficiencies to the transit system by "all day" ridership?

2. May a re-use appraisal as discussed in earlier examples be utilized to

determine fair market value?

3. May the program income from the sale/lease of the property be retained for use on other transit supportive development projects that are otherwise eligible? A version of this was discussed in the third question of the first project. As support for this position, it should be recognized that Congress provided such direction to FTA as part of the Department of Transportation and Related Agencies Appropriations Bill of 1990: "In addition, the Committee believes that transit agencies shall be allowed to retain lease revenues retained from the sale or lease of properties when these properties are utilized for a joint development project. The Committee believes that these incentives will encourage local transit agencies to engage in such development, and encourage them to fully explore the value capture of development on or near transit sites." (See U.S. Senate, Calendar No. 229, Report 101-121, Department of Transportation and Related Agencies Appropriations Bill, 1990, September 7, 1989, Mr. Lautenberg, p. 101).

This concludes our description and discussion of each of the six specific projects and the issues of eligibility on the various project elements. As stated earlier, it is important to establish the potential to utilize a full range of development tools in order for a TOD Implementation Program/Livable Communities Initiative to be workable. Because of the lack of clarification on issues of eligibility in a number of areas, the projects discussed in this letter often contain more conventional elements. We request that you answer the questions contained in this letter, combined with the questions in our June letter in the broadest possible terms for guidance on other future projects.

Future Direction - Based on various possibilities discussed in the November 4 meeting, a possible direction for FTA may be as follows:

1. FTA will answer by letter the questions raised in the two letters from us. This will provide the basis for us to pursue further project refinements for a TOD Implementation Program. FTA will approach this as a "small d" demonstration project.
2. As part of the Six-Year Transportation Program Update, the Portland region will decide on the issue of whether to fund TOD Implementation and the dollar amount from STP Flexible Fund and future CMAQ funds.
3. The projects will be defined into site specific projects for final FTA approval.
4. After some experience with the initial CMAQ and STP Flexible Funds projects, FTA will produce written guidelines to be published in the Federal Register.

Other Issues - There were a number of other issues raised in the two discussions. These included:

Where is the transportation project in any of these development projects? The transportation project is the private economic development/livable communities project if the development project is physically and functionally connected to an existing or approved conventional transportation project and it enhances the effectiveness of the transit project. The federal definition of the project would be limited to that element that is to be funded with CMAQ or STP Flexible Funds. It is not necessary for such a development project to include traditional transit elements at that time such as a park and ride or transit station improvements, providing the development is enhancing a traditional transit project that is already in place or under construction.

How is the federal interest protected? The federal interest is protected by the following: a) the grant approval from FTA will contain special provisions that are the defining elements of the project, such as direct connections, higher density housing, street front retail, etc; b) the development agreement between the local agency and the developer will include those elements; c) the appropriate covenant, restriction, license agreement or easement will be incorporated into the deed (if sale/lease is used) or other agreement if not a sale or lease. This restriction would extend for the useful economic life of the project.

What criteria should be included in evaluating a project? The following criteria should assist in evaluating possible projects: (the criteria would not necessarily apply equally, nor should a project be required to satisfy all of the criteria)

1. The development project is physically and functionally connected to the mass transit project.
2. The project enhances the effectiveness of the transit facility.
 - a) Increased ridership
 - b) Improved environment for the transit patron, including services and conveniences
 - c) Efficiencies to transit system gained by induced ridership, reverse flow ridership and non-peak demand ridership.
3. Capitalized value of added fair box revenue compared to the value of the grant. This is a tough index and only reflects the direct financial return to transit.
4. Cost per induced rider - This should be compared against other similar livable communities projects and against all other FTA capital

investments. It should be expected that the development project should be scrutinized to a higher standard. As an example, if these kinds of development projects really do work as well as we assert, why not require that a given development project should be 50% more cost effective in costs per induced rider than for the conventional transit project being enhanced? This may also soften any potential criticism as to why such projects are being funded.

5. Leverage of public funds to private investment.

6. Realization of CMAQ goals and objectives.

7. Minimum standards for the development including minimum densities, lower parking ratios, non-TOD land use precluded, etc.

How can the federal interest be protected from possible changes that dilute the transit benefit? The initial grant would contain conditions consistent with the proposal by the Portland region that was the subject of FTA approval. As an example, if the proposal is for a development of 150 housing units at a density of 35 units/acre directly connected to the transit station by a pedestrian promenade, then the grant should be subject to these conditions. Inclusion of these conditions should be extended into the development agreement (if it involves sale/lease of transit property), financial participation agreement (if a grant without transit owned land), and into appropriate covenants, easements or licenses depending upon the nature of the development and the improvements that constitute the federal element.

What will become of the FTA investment in the event of a default by the developer? Naturally, every effort must be made by the local agency in reviewing the developer's track record and financial capabilities to avoid this. However, it must be realized that in the development world, this is part of the landscape. If the developer goes bankrupt after the development project is completed, even though unfortunate, the project will remain in place, open for business, and will continue to provide the public benefit of transit ridership and CMAQ objectives. The public benefit continues. If default occurs before construction is commenced, the local agency and FTA would be protected by provisions in the Development Agreement that title or the lease hold estate would not be vested until the financing is in place.

How can FTA be certain that the local agency is capable of administering the project? As conditions of the grant, FTA would require that the local grant recipient: a) has the legal authority to undertake the project, b) demonstrates evidence of local community and political support for the project, and c) has

competent professional staff proficient in public/private partnership projects.

How can we be certain the developers are not receiving an unusual profit? If the local agency has disposed of its land to a developer through a lease/sale agreement, the disposition appraisal becomes the instrument for being certain that the value is fair. If the grant is for site preparation or improvements, then the cost penalty, if any, caused by the special conditions of a project that make that project transit supportive should be calculated by an independent analysis, and this should form the basis of the grant amount.

How can FTA become expert on matters such as this? The business of public-private partnerships has been around for a very long time and there are a number of firms with expertise in understanding the principles of the business. The unique transit benefit slant that must be brought into the Livable Community/TOD equation should be handled by the project criteria suggested here. PMO's could be used initially to supplement FTA staff, although, if FTA truly intends to make Livable Communities a central focus of its direction, it may be advisable to quickly build in-house capabilities for this program.

We hope this letter has provided to you specific examples of the kinds of projects that will be developed in response to questions 2-8 in our letter of June 28. We ask that your answers include, if possible, a full range of site preparations and site improvements that may be eligible in question 8 of the June letter. In addition, we believe that creative co-use of station improvements should be allowed for day care, service retail and other uses, providing the finished interior building improvements constituting the private uses are not grant funded.

Finally, regarding the issue of outright acquisition of property of an adjacent development site, we have the following comments: The suggestion was made by FTA legal counsel at the November 4 meeting to advance the value of other site improvement costs to the local agency, and this funding could then be used to acquire property. This tool could be useful in certain project situations. However, we strongly believe that a number of good projects will work much better if we are allowed to acquire the property outright, and that such a development project should be justified and approved on its merit as to its ability to function as a 3(a)(1)(D) project. We believe that there is strong evidence that the law intended for this to be allowed. As stated in the June 28 letter, the Committee on Banking, Housing & Urban Affairs Reports states that "These 'joint development' projects would include the coordinated planning and development of transportation facilities and the adjacent land in order to maximize the economic and social return of the public investment..." (See pp. 8 & 9, Committee Report).

In addition, a report from the Congressional Budget Office entitled, "Congressional Budget Office Cost Estimate", May 12, 1978, in reviewing budget impacts of the

Surface Transportation Act of 1978, states: "The bill amends the Urban Mass Transportation Act of 1964 to modify the purpose and structure of a number of programs, and to authorize funding for fiscal years 1979 through 1982. The bill amends section 3 of the act to authorize the Secretary of Transportation to make discretionary grants or loans to states and/or local public bodies for a number of purposes, including: construction or extension of fixed guideway systems; major bus fleet expansions; the acquisition, construction, and improvement of certain mass transportation facilities and equipment; and the acquisition of land and the costs of preparing such land for urban development purposes to enhance approved mass transportation projects." It is interesting to note that this language separately lists acquisition for mass transportation facilities and acquisition for development purposes, which indicates that the language in Section 3(a)(1)(D) was not intended to authorize acquisition for conventional transit improvements, but was in fact for development projects.

And finally, the rules and regulations governing 3(a)(1)(D) published in the Federal Register stated "a) Eligible project costs for joint development projects include but are not limited to the following: ...3) Land acquisition, relocation, and demolition...." (See p. 5822, Federal Register, Vol. 46, No. 12, Monday, June 19, 1981.) Some have argued that this acquisition language is intended for station or conventional transportation projects. However, paragraph 642.29, which is the paragraph containing the list of eligible costs, is specific to "joint development projects". Further, in paragraph 642.25 of these same Rules, joint development is defined as "...projects that are eligible for funding... are commercial, residential, industrial, or mixed used developments that are induced by or enhance the effectiveness of mass transportation projects...."

We sincerely believe a very strong case exists that outright acquisition of the adjacent development site can be made because it is indeed clear that this activity was intended to be eligible within the authority of Section 3(a)(1)(D). We appreciate that you are attempting to permit the maximum latitude possible in your interpretation to us on this issue. We believe you can be conservative in your interpretation and come to this viewpoint.

This concludes our discussion of specific examples and other issues relative to eligibility questions of CMAQ and STP Flexible Funds. It is important that the issues contained in questions 2-8 of the June 28 letter be answered in the near future, since some real projects are unresolved on key elements. As an example, the Gresham Central Housing Project is moving forward into design review, yet at this time, FHWA has determined that from its viewpoint as a CMAQ highway project the pedestrian promenade is not an eligible element. FTA guidance is needed if it is to be qualified as a CMAQ transit project. The region will set in place a new Six-Year Transportation Program in the near future. In order to be able to continue with the two applications for TOD Implementation, the Regional Revolving Fund (which is to provide funding for

acquisition of an adjacent development site), and the Site Improvements/Site Preparation Programs, a strong signal from the Federal Transit Administration that these elements are eligible is needed by December 15 of this calendar year.

We again thank you for this opportunity to work with you. Advancing the Livable Communities/TOD programs toward implementation is very important to our realizing a solid return on our transit investment.

Sincerely,



Andrew C. Cotugno
Planning Director

Enclosures: Congressional Budget Report; Appropriations Committee/Lautenberg language; TOD Implementation Program request for funding to region; short description of projects; additional enclosures, 6 by separate cover.

cc: Berle Schiller, FTA
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MARCH 15, 1995

Mr. Andrew C. Cotugno
Planning Director
Portland Metro
600 Northeast Grand Avenue
Portland, Oregon 97232-2736

Dear Mr. Cotugno:

I am responding to the eight questions posed in your letter of June 28, 1994, regarding certain joint development projects under consideration for the Portland metropolitan area. Tri-Met is seeking Federal funds to establish a revolving fund for a joint development project and related funding for construction of transit improvements in joint development projects. Your questions relate to the eligibility of certain elements of these projects for funding under the FTA's Livable Communities Initiative, with specific reference to FTA's Section 3 Discretionary Capital Grant or Loan Program, Surface Transportation Program (STP) funds, and Congestion Mitigation and Air Quality (CMAQ) funds.

Your letter raised serious and thoughtful legal and policy questions explored in a meeting of Tri-Met and FTA representatives on November 4, 1994. While your letter of November 16, 1994—to which FTA's Office of Grants Management will respond separately—provided more project-specific information helpful to our consideration of your questions, the following discussion replies generally to the questions raised in your June 28 letter; it does not address the merits of your proposed projects.

Question 1. "Will the current FTA Administration allow the use of FTA capital funds for property acquisition of a project development site that is physically connected to an LRT station as an eligible expenditure?"

Federal transit law authorizes FTA to make grants or loans for transportation projects that enhance urban economic development or incorporate private investment, including commercial and residential development. I have prepared a legal memorandum, a copy of which is enclosed, regarding the eligibility of joint development activities for funding under 49 U.S.C. 5309 (discretionary capital grant), 49 U.S.C. 5307 (block grants), 23 U.S.C. 133 (STP), and 23 U.S.C. 149 (CMAQ) funds.

As your letter indicates, the legislative history of section 3(a)(1)(D) of the Federal Transit Act (FT Act) (codified at 49 U.S.C. 5309(a)(5) and (f)) supports the conclusion that the acquisition of land adjacent to a fixed-guideway station for joint development is

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eligible for FTA funding. Moreover, this Administration recognizes the important role that FTA can continue to play in linking joint development and transit, while furthering such broad national goals as improved air quality, energy conservation, and mobility.

To that end, FTA has determined that both capital and block grant funds, as well as flexible funding from CMAQ and STP, may be used for appropriate transit-supportive joint development projects, on a project-specific basis, where the grantee can demonstrate (1) a physical or functional relationship to the transit project, and (2) an enhanced effectiveness of the transit project. FTA will allow as an eligible cost, on a project-specific basis, the appropriate acquisition of real estate.

Question 2. "After the property is sold or leased to a private developer, may the proceeds be utilized again for purchase of an additional development project site, providing it, too, is physically connected to yet another LRT station?"

In this case, Tri-Met intends to use capital, STP, or CMAQ funds to acquire the property. Since the stated purposes of the proposed revolving fund—for a transit-supportive development project that is physically or functionally related to a mass transit project and that enhances the effectiveness of the mass transit project—are consistent with the express purposes of the joint development authorities of the Secretary, I believe there is implicit authority under existing Federal transit laws for the proposed use. In addition, the common rule allows the proceeds to be used by the grantee for the purchase of an additional development project site. (See 49 C.F.R. 18.31(c)(1).) Moreover, this position is consistent with FTA's position that section 5322 (formerly section 20) permits FTA to grant funds to establish revolving loan programs for disadvantaged business enterprises.

Question 3. "For technical purposes, in a transit supportive development project, can the disposition of property to a private developer be treated as utilization of a statutorily eligible element of a development project, rather than as disposition of surplus property?"

The answer is "yes." This question addresses the nature of the transaction. Program functions are governed by Federal transit law, while grant administration functions are governed by the common rule. (See 49 C.F.R. 18.)

Thus, where the express purpose of a grant is to acquire and dispose of properties for joint development purposes, the disposition of the property does not implicate the post-grant rules applicable to surplus property. Rather, the disposition is governed by the grant terms. This corresponds to the issue raised in your question two, relating to a proposed revolving fund for a transit-supportive development project.

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It should be noted that under section 5309(a)(5) (former section 3(a)(1)(D)), the Secretary has the authority to set any terms or conditions in the grant that he deems "necessary or appropriate," including allowing a grantee to use all the proceeds from the sale of land for grant purposes even where the grantee realizes a net gain on the sale of the property over and above the original purchase price. (See former section 3(a)(1)(D); although this language does not appear in the codification, the statute adopting the codification expressly states that it is not intended to change substantive law.) This program authority differs from the grant administration requirements under the common rule where the grantee is required to return the pro rata share of that increase to the Federal Government.

Question 4. "Can the value of the sale or lease of the property to a private developer be based on a 're-use' appraisal, which takes into consideration extraordinary development costs of a transit supportive development project, rather than an 'acquisition' appraisal? Such extraordinary costs may include additional costs associated with creating a more dense, compact development sensitive to transit as compared to more conventional, less intense development that may not be as transit friendly."

A "re-use" appraisal method is not well-defined in the industry and has had little application other than in the context of urban renewal. As a general rule, land value should be based on fair-market value. In this case, FTA grant funds are being used to purchase the property. The grantee proposes to apply certain land use restrictions that may affect the land value. If the proposed sale of property at a reduced price would produce a clear transit benefit, FTA will consider the proposed restrictions on a project-by-project basis.

It is important to note that Tri-Met is required to ensure that any person or entity that contracts to occupy space in facilities (as opposed to other eligible cost items) federally funded as a capital project shall pay a fair share of the costs of such facilities, through rental payments and other means. Tri-Met is permitted some discretion to determine those costs, and it can retain and use the resulting revenues as program income.

Question 5. "If the federal definition of the project is only site acquisition, will federal cross-cutting requirements apply to privately funded project elements, other than those federal requirements necessary for acquisition of property?"

Section 5309 expressly prohibits the use of FTA funds for either public highways or the construction of revenue-producing facilities, whether publicly or privately owned. Thus, FTA cross-cutting requirements will not apply to either highways or revenue-producing facilities included in the joint development that are not federally funded:

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Whether or not cross-cutting requirements apply to a particular project is generally determined by case law on "segmentation." As a general rule, Federal cross-cutting requirements will apply to all line items and project activities that fall within the scope of the work under the FTA grant.

A "but for" test may be used as a rough gauge to determine whether a particular project element can be segmented from a development project. For example, a minimally operable segment of the MARTA system in Atlanta, Georgia, built with FTA funds and found to have logical termini and independent utility, was allowed by the court to be segmented from another operable segment built solely with state and local funds. Consequently, the Davis-Bacon Act applied to wages paid on the FTA-funded segment, but not to the non-federally funded segment.

In the case of Tri-Met, but for the federally-funded land acquisition, there would be no joint development project, and absent other statutory or regulatory constraint, all FTA cross-cutting requirements will likely apply to the entire project, except for the non-FTA funded revenue-producing facilities as stated above.

Question 6. "If the transit supportive development is disposed of to a private developer, will FTA allow a long-term subordinated ground lease?"

Assuming that you are asking whether FTA will allow use of a long-term subordinated lease to be used in lieu of the outright sale of land acquired under this proposal, the issue raised by the question implicates the statutory requirement that the grantee retain continuing control and use of project property for as long as the property is needed for eligible program purposes.

In order to answer the question, FTA would need to understand the risk to the Federal investment incurred by the subordination. Since FTA reserves the right to review and concur in any lease of FTA-funded assets by a recipient prior to execution of the lease, FTA would examine each such proposal on a case-by-case basis to weigh the risk to the Federal interest. If, for example, the grantee is the lessor, but its leasehold interest is subordinated to that of the construction lender, the risk to the Federal investment is considerably greater than under a long-term lease which is not subordinated. While FTA has considerable leeway in sharing or assuming the risks involved in a joint venture project, whether to assume those risks can only be determined by the specific proposal presented for our review.

In this case, you indicated in your more recent letter of November 16, 1994, that "[n]o portion of the transit property to be utilized for the LRT track and station platform will be subordinated," thereby allowing Tri-Met to retain continuing control of the transit property. This description suggests that the relevant risk for your project may be low.

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Question 7. "May the local agency utilize an FTA approved grant to participate in the financing of building improvements of the transit supportive development project?"

The answer is yes, with certain limitations. If the transit-supportive development project is a joint development project under 49 U.S.C. 5309 (a)(5) and (f)(2), FTA permits as eligible costs such project elements as pedestrian walkways, building foundations, open space and street improvements, so long as the threshold requirements of section 5309(a)(5) are met: that the project is physically or functionally related to a mass transit project and that it enhances the effectiveness of the mass transit project. FTA will not fund the construction of a commercial building. Also, it is well established that certain requirements and limitations, such as the cross-cutting requirements discussed above in response to question 5, apply to the project.

Question 8. "Are other project elements such as site preparation and site improvements eligible to assist in inducing transit supportive development, whether or not associated with property acquisition in item 1 above?"

The project elements as outlined in your June 28, 1994, letter are eligible for funding under the authority of section 5309 without regard to the acquisition of real property.

I hope that these responses are helpful to you as you go forward with your transit development proposals. Please let me know if you need any clarification of this response.

Very truly yours,



Berle M. Schiller
Chief Counsel

Enclosure

cc: Mr. Terry Ebersole
Regional Administrator (w/enc.)



U.S. Department
of Transportation
Federal Transit
Administration

Memorandum

Subject: Statutory Authority in Support of FTA
Funding for Joint Development Projects

Date: MARCH 15, 1995

From: 
Berle M. Schiller
Chief Counsel

Reply to
Attn. of:

To: Gordon J. Linton
Administrator

SUMMARY

This memorandum responds to your request for my opinion concerning the eligibility of capital, formula, STP, and CMAQ funds for joint development activities authorized under the Federal transit laws. I find that all of these funds may be used for appropriate transit-supportive joint development projects where a grantee can demonstrate (1) a physical or functional relationship to the transit project, and (2) an enhanced effectiveness of the transit project.

DISCUSSION

As you know, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) gave state and local governments much greater flexibility in decisionmaking than they previously had under the federally funded surface transportation programs. ISTEA also established the mandate for "intermodalism" — the interconnection of transportation systems to improve the overall quality of life in the United States by reducing energy consumption and air pollution and promoting economic development and the nation's competitiveness in international commerce.

ISTEA specifically enhanced and strengthened the tools available to FTA to achieve those goals. Most notably, ISTEA created flexible funding mechanisms, whereby local decisionmakers may use Federal highway and transit funds for either highway or transit projects. ISTEA also established the principle that local MPOs are to take a broad perspective in planning and programming and consider the impact of transportation policies on land use and development. Further, ISTEA gave added impetus to FTA's joint development authority.

I. DISCRETIONARY GRANTS

Federal transit law authorizes FTA to make grants or loans for transportation projects that enhance urban economic development or incorporate private investment, including commercial and residential development (49 U.S.C. subsections 5309(a)(5) and (f) and 5309(a)(7) (formerly sections 3(a)(1)(D) and 3(a)(1)(F) of the Federal Transit Act)). The legislative history supports a finding that appropriate joint development activities, including walkways, common foundations, utilities, lighting, and the acquisition of land, are eligible for funding under this authority.

Current section 5309(a)(5) is derived from the 1974 Young Amendment to the Urban Mass Transportation Act of 1964 (UMT Act), which authorized the Secretary to make grants or loans for "the establishment and organization of public or quasi-public transit corridor development corporations or entities." The Young Amendment provided, in pertinent part, that

eligible facilities and equipment may include . . . real property (but not public highways), within the entire zone affected by the construction and operation of transit improvements, including station sites, needed for an efficient and coordinated mass transportation system which is compatible with socially, economically, and environmentally sound patterns of land use.

In 1978—four years after the Young Amendment—Congress again amended section 3(a) of the UMT Act. Joint development authority was redefined in a new subsection 3(a)(1)(D) to include:

[T]ransportation projects which enhance the effectiveness of any mass transportation project and are physically or functionally related to such mass transportation project or which create new or enhanced coordination between public transportation and other forms of transportation, either of which enhance urban economic development or incorporate private investment including commercial and residential development. The term 'eligible costs' includes property acquisition, demolition of existing structures, site preparation, utilities, building foundations, walkways, open space, and the acquisition, construction, and improvement of facilities and equipment for intermodal transfer facilities and transit malls, but does not include the construction of commercial revenue-producing facilities, whether publicly or privately owned, or of those portions of public facilities not related to mass transportation. . . .

With this amendment, Congress restructured the discretionary capital grant program to include "joint development and urban initiative activities" as examples of the "types of projects which could be financed with section 3 funds." (Conference Report, H. Rept. No. 95-1797, p. 127.) The Senate Committee on Banking, Housing and Urban Affairs

Report recognized that "joint development" projects would involve the coordinated planning and development of transportation facilities and the adjacent land in order to maximize the economic and social return of the public investment." The Report cited as examples of activities which would be financed under UMT Act section 3(a)(1)(D): "foundation work and the utility capacity that would accommodate both a transportation facility and a nontransportation facility, walkways or tunnels from a transportation facility to a nontransportation facility, and land adjacent to a transportation improvement but not for the building erected on such land" unless it is necessary to the "proper functioning of the transportation facility." (Senate Report 95-857, pp. 8-9.)

During Senate consideration of the conference report, Senator Harrison Williams described this new provision as enhancing local flexibility for such transportation projects:

The conference substitute adopts the language of the House bill concerning joint development and urban initiative activities because it incorporates both activities into one subparagraph. This will afford local public bodies additional flexibility in fashioning local projects and ease the administrative difficulties which could have resulted from the possible overlap between the separate provisions in the Senate amendment.

(124 Cong. Rec. S18987 (daily ed. October 14, 1978) (statement of Senator Williams).)

Subsequent to the enactment of UMT Act section 3(a)(1)(D), FTA (then UMTA) approved grant applications for section 3 capital funds totaling approximately \$50 million. These applications had been pending during Congressional consideration of the 1978 amendments and were specifically discussed during the Senate hearings. FTA approvals were explicitly premised on the authority of the Young Amendment as originally enacted in 1974. For example, one grant to the City of Baltimore, approved in 1979, expressly included funding for the acquisition of land physically adjacent to station sites and for operating costs of the public development corporation. In another instance, FTA approved a grant to Portland's Tri-Met in 1981 to fund a corridor development corporation.

Thus, although the 1978 amendments changed the wording of the Young Amendment, subsequent FTA project approvals confirmed that the scope of the Secretary's legal authority remained intact for those elements of joint development projects that created tangible linkages to mass transportation such as walkways, common foundations, utilities, and lighting.

In 1991, Congress both reaffirmed and expanded the scope of FTA's joint development authority when it enacted ISTEA. ISTEA expressly amended the Federal Transit Act to authorize funding of transit-supportive improvements, so long as those projects support fixed guideway systems and enhance transit usage in the corridor. This new joint development activity expressly includes "protecting rights of way through acquisition,

construction of dedicated bus and high occupancy vehicle lanes and park and ride lots, and other nonvehicular capital improvements that the Secretary may decide would result in increased mass transportation usage in the corridor." (49 U.S.C. 5309 (a)(7) (emphasis added).) Such examples make clear that "development" is applied broadly to include not just activities such as acquisition and construction of new transportation corridors, but also capital improvements to existing corridors that will enhance their utility as transit resources.

Thus, Congress has made clear that the Federal transit laws authorize FTA funding of capital projects that do not themselves constitute "transit" activities, but that directly support, enhance, and increase usage of transit facilities.

II. BLOCK GRANTS

Until 1974, the UMT Act section 3 discretionary grant program was the only vehicle for funding capital transit projects. In 1974, Congress added the UMT Act section 5 formula grant program to distribute Federal transit funds to states and urbanized areas for both capital and operating purposes. Later, in 1982, Congress enacted a new UMT Act section 9 block grant program (now codified at 49 U.S.C. 5307 and 5336 and often referred to as the "formula program"). This new program was designed to facilitate the distribution of funds and the grant approval process and to allow local officials greater flexibility in setting their own priorities among various transportation projects. The UMT Act section 9 block grant program combined the agency's authority to fund capital projects, operating assistance, and planning projects. As discussed below, it thus incorporated the purposes of the then-existing sections 3 and 5 grant programs, along with the section 8 planning program. The intent from the outset was to create in the section 9 block grant program a more efficient means of distributing transit funds, not to authorize new grant program purposes. In my opinion, therefore, block grant funds can be used for the same general purposes as those authorized by the discretionary capital program, including appropriate transit-related joint development projects.]

A. Block Grant Authority Derives From Former UMT Act Sections 3, 5, and 8

When Congress first established the UMT Act section 3 discretionary grant program, it clearly intended that Federal funds could be used for the acquisition of real property, including land, in connection with a mass transportation system. As discussed above, Congress later amended section 3 in 1974 and again in 1978 to authorize Federal transit funds for certain transit-related joint development activities.

In 1974, Congress created the UMT Act section 5 formula grant program which permitted transit funds to be used for either capital or operating assistance projects. These section 5 funds were apportioned to all urbanized areas via a formula based on population and population density. This formula program was designed to facilitate the grant distribution process and permit some flexibility at the local level.

In 1978, Congress amended section 5 with the apparent intent that it should "constitute the source of routine capital activities." (Conference Report, H. Rept. No. 95-1797, p. 130). More capital activities were included in the formula program to make it a more balanced program. Thus, certain capital activities funded under the section 3 discretionary program, such as bus facilities and equipment and fixed guideway programs, were now funded in part under the section 5 formula program as well as the section 3 discretionary capital program. (Senate Report No. 95-857, pp. 15-19.) This change allowed greater predictability of available grant funds and more flexibility to local officials for planning capital transit projects. (Federal Public Transportation Act of 1978: Hearings Before the Senate Committee on Banking, Housing, and Urban Affairs, 95th Cong., 1st Sess. (March 1, 2, and 3, 1978) (statement of Secretary Brock Adams, pp. 16-17), (statement of UMTA Administrator Richard S. Page, p. 31); Senate Report No. 95-857, p. 19.)

In 1982, the House Committee on Public Works and Transportation initiated a "major re-structuring of the UMTA grant programs." (House Report No. 97-555, p. 37.) Specifically, the committee designed a new UMT Act section 9 block grant program to distribute annual grants on a formula basis for capital projects, operating assistance, and planning programs.

The major feature of the bill is to reduce significantly the amount of funds delivered through the section 3 discretionary grant program and to increase dramatically the amount of UMTA funds delivered by formula.

(House Report No. 97-555, p. 37.) Congress wanted a statutory delivery system that ensured the use of the formula mechanism as a major delivery system for capital projects, thereby assuring a more equitable distribution of capital resources. Operating assistance was capped under the new block grant program. The new block grant program was designed broadly to incorporate activities already authorized under UMT Act sections 3, 5, and 8.

Indeed, the purpose of the block grant program is defined by its structure. The language in the pre-codified UMT Act section 9 provision opens with a lengthy and detailed recitation of the complex apportionment formula. The purpose provision is set forth in subparagraph (j), which states in pertinent part:

(j)(1) Grants under this section shall be available to finance the planning, acquisition, construction, improvement, and operating costs of facilities, equipment, and associated capital maintenance items for use, by operation or lease or otherwise, in mass transportation service, including the renovation and improvement of a historic transportation facility with related private investment.

As the codified language¹ makes clear, the block grant program provides grants for capital projects, planning activities, and operating assistance. All these activities derive from former UMT Act sections 3, 5, and 8.

A 1987 UMTA Circular amplifies the relationship between the discretionary and block grant programs:

The Section 3 [discretionary] resource will be directed primarily to those rail modernization and major bus projects that require Federal funding beyond that available under Section 9 [block grants]; to deal with continuing deterioration of existing transit facilities; and to help bring those facilities to a level of acceptable safety, reliability and efficiency. It also will be directed to cost-effective new system projects.

Total funds available under Section 9 should provide the major rail cities significant program resources to continue and to some degree, accelerate on-going system modernization, rehabilitation, or development.

(UMTA C 9030.1A, p. I-3.) In fact, FTA has funded a great many capital, operating, and planning programs through block grants, leaving the discretionary program available to fund major capital investments ("new starts" in agency parlance) or expansions of fixed guideways.

B. Capital Projects Include Transit-Supportive Joint Development Activities

Section 5307(b)(1) of title 49 of the U.S. Code (former FT Act section 9(j)) authorizes grants for capital projects. "Capital project" is defined as "[a]cquiring, constructing, supervising, or inspecting equipment or a facility for use in mass transportation, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, and acquiring rights of way)" (49 U.S.C. 5302(a)(1)(A); see *a/so* former section 12(c)(1) of the FT Act.)

This language suggests that expenses that are "incidental" to the acquisition or construction of a mass transportation facility may include appropriate transit-supportive joint development activities, such as walkways, common foundations, utilities, lighting, and the acquisition of land. However, such transit-supportive activities must be

¹ The codified language re-states former section 9(j) as:

The Secretary of Transportation may make grants under this section for capital projects and to finance the planning, improvement, and operating costs of equipment, facilities, and associated capital maintenance items for use in mass transportation, including the renovation and improvement of historic transportation facilities with related private investment. (49 U.S.C. 5307(b)(1) (emphasis added).)

physically or functionally related to the mass transportation project; enhance the effectiveness of the project; and increase usage of the mass transportation system. Therefore, in my opinion, appropriate transit-supportive joint development activities are eligible for funding under 49 U.S.C. 5307(b)(1). This opinion accords with Congress' intent to achieve predictability of available funding and greater flexibility for local decisionmakers which ISTEA reinforced.

An agency charged with implementing a law is given great deference in applying and interpreting the statutory provisions. Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-45 (1984), reh'g denied, 468 U.S. 1227 (1984); Goldin v. FDIC, 985 F.2d 261, 263 (6th Cir. 1993). Thus, on this alternative ground, I have determined that "capital projects" can be funded under the block grant program as well as the discretionary capital program for appropriate transit-related joint development activities.

C. Comprehensive Planning Requirements

The comprehensive planning requirements in the Federal transit laws support a finding that block grant funds can be used for appropriate joint development capital projects. Congress directed from the outset that recipients of Federal grant funds must plan for a coordinated urban transportation system as part of a comprehensive development of the urban area. These planning requirements were set forth in the original UMT Act section 3 program and restated in the 1974 amendments in section 5.

In 1978, Congress enacted a new UMT Act section 8 planning provision which pulled together and expanded on various planning requirements then scattered throughout the UMT Act. This planning section, which applies to all Federal transit grant programs, established the fundamental requirement that plans be based on transportation needs as well as social, economic, energy and environmental goals and objectives. It declared that transportation plans and programs would be developed in light of

comprehensive long-range land use plans, development objectives, and overall social, economic, environmental, system performance, and energy conservation goals and objectives, and with due consideration to their probable effect on the future development of urban areas of more than fifty thousand population. The planning process shall include an analysis of alternative transportation system management and investment strategies to make more efficient use of existing transportation facilities.

(Public Law 95-599, section 8(a).)

The passage of ISTEA in 1991 underscored Congress' focus on linking the Federal transit program to broader issues of national welfare, and in particular, broader issues of economic and urban development. Section 3012 of ISTEA amends section 8 of the

FT Act by adding a new subparagraph (f) to require that local decisionmakers take a broad perspective in planning and programming.

(f) **PLAN AND PROGRAM FACTORS.**—In developing transportation plans and programs under this section and sections 5304-5306 of this title, each metropolitan planning organization at least shall consider the following factors:

(1) preserving existing transportation facilities and, where practical, ways to meet transportation needs by using existing transportation facilities more efficiently.

(2) the consistency of transportation planning with United States Government, State, and local energy conservation programs, goals, and objectives.

(3) the need to relieve congestion and prevent congestion from occurring.

(4) the likely effect of transportation policy decisions on land use and development and the consistency of transportation plans and programs with short- and long-term land use and development plans.

(5) programming expenditures on transportation enhancement activities, as required under section 133 of title 23.²

* * * *

(13) the overall social, economic, energy, and environmental effects of transportation decisions.

(14) ways to expand and enhance transportation services and to increase usage of those services.

² Section 133 of title 23 (section 1007 of ISTEA), establishes the Surface Transportation Program (STP), a principal provision for flexible funding for highways and transit as discussed *infra*. The definition of an "enhancement" includes facilities for pedestrians and bicycles; landscaping and other scenic beautification; preservation, rehabilitation, and operation of historic transit facilities; and archaeological planning and research. (49 U.S.C. 5303(b) (emphasis added).)

These directives to the local decisionmakers are explicit: local transportation plans must factor in land use and development issues, enhancement of transportation services and usage, and the "overall social, economic, energy, and environmental effects" of transportation projects.

D. No Express Restrictions

Finally, the absence of any express restriction on eligible capital projects in the block grant program further supports a finding that block grant funds can be used for appropriate joint development capital projects. Sections 5307(d)(1) and (n)(2) of title 49 (former FT Act sections 9(e)(1) and 9(e)(3)) set forth a series of conditions of assistance—Buy America, labor protections, charter bus, school bus, safety, nondiscrimination—all of which apply equally to block grant recipients and to all other transit grantees. None of these provisions relates to standards for eligibility. In addition, a grant recipient must certify its compliance with the planning requirements required by section 5303. (49 U.S.C. 5307(d)(1)(H).) As discussed above, the ISTEA amendments made the Federal transit planning provisions more sweeping in scope, thus permitting considerably more breadth to the scope and nature of the transportation projects eligible for block grant funding.

Finally, in 1982 Congress added to section 9(j)(1) a provision that allows grants for "the renovation and improvement of a historic transportation facility with related private investment." (Codified at 49 U.S.C. 5307(b)(1).) Clearly, this phrase authorizes transit-supportive joint development activities. Although nothing explicit appears in the legislative history, the provision was added specifically to authorize the renovation of a small train station in Indianapolis. The legislative history provides no explanation for "renovation" activities (which were not expressly authorized in the FT Act as an eligible activity) or the term "historic." In short, the logical reason for its inclusion in the block grant programs is that Congress envisioned that, for the most part, major transit projects would be funded by the discretionary capital program, thereby intending that block grant funds could be used for transit-supportive joint development.

In conclusion, I find that appropriate transit-related joint development activities funded under the discretionary capital grant program can also be funded under the block grant program.

III. FLEXIBLE FUNDING

Flexible funding provisions enacted with ISTEA now permit state and local officials to allocate potentially more than \$70 billion in Federal highway funds over a six-year period for either highway or transit projects. ISTEA added two important provisions, the Surface Transportation Program (STP), 23 U.S.C. 133, and the Congestion Mitigation and Air Quality Program (CMAQ), 23 U.S.C. 149, which are the most used of the flexible funds for mass transit projects.

Congress intended that the STP give "States and local governments greater flexibility in using Federal funds to meet their transportation needs." (Intermodal Surface Transportation Efficiency Act of 1991 Conference Report, H. Rep. No. 102-404, p. 300.) This provision allows highway funds to be used flexibly to meet local needs and expressly allows STP funds to be used for "[c]apital costs for transit projects eligible for assistance under the Federal Transit Act" (23 U.S.C. 133(b)(2).) Since Congress spoke broadly about "transit projects" without specifying any particular FTA grant program, I find that STP funds can be used interchangeably for a capital project eligible under either the discretionary capital or the block grant program.

CMAQ authorizes funds for a "transportation project or program" that can demonstrate that it is "likely to contribute to the attainment of a national ambient air quality standard." (23 U.S.C. 149(b).) The CMAQ program has helped to further the integration of national transportation and environmental policy. Again, Congress spoke in general terms of a "transportation project." Thus, CMAQ funds can be used for any project or program eligible under either the discretionary capital or block grant program so long as the grantee meets the air quality standards articulated in the law.

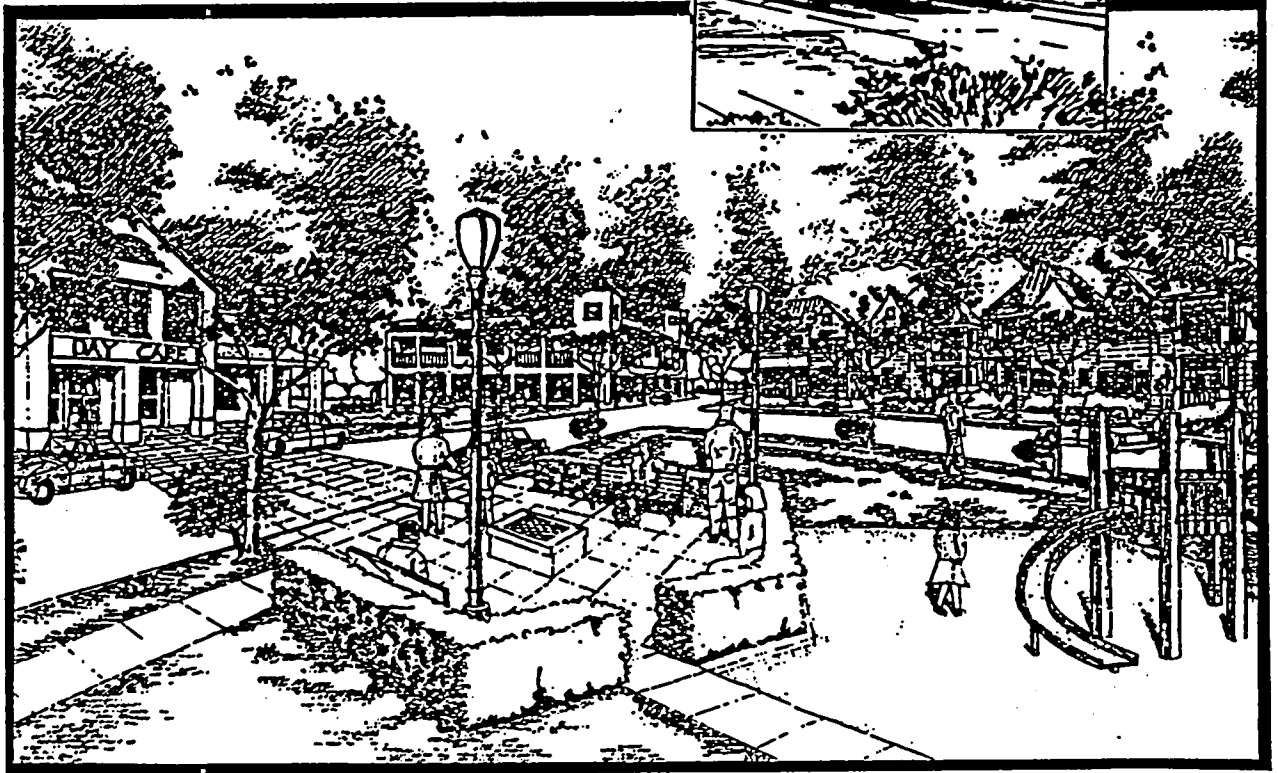
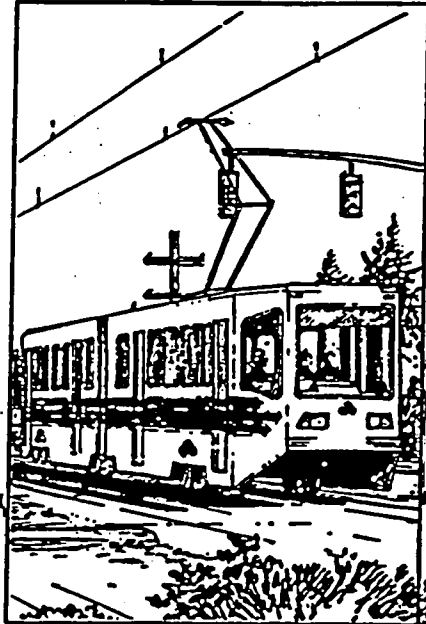
Thus, subject to the requirements imposed by ISTEA, both STP and CMAQ funds can be used for any purpose authorized under the Federal transit laws, including the joint development activities of the discretionary capital program.

IV. CONCLUSION

Therefore, I conclude that Federal transit funds authorized under 49 U.S.C. 5309, 49 U.S.C. 5307, STP (23 U.S.C. 133), and CMAQ (23 U.S.C. 149) may be used for appropriate transit-supportive joint development projects where a grantee can demonstrate: (1) a physical or functional relationship to the transit project; and (2) an enhanced effectiveness of the transit project.

TOD IMPLEMENTATION PROGRAM

*An Application
For 2040
Implementation
Funding*



*Metro
March 1995*

This application by Metro is for \$7.0 million to establish an implementation program for Transit Oriented Districts (TODs). An initial application was submitted for TOD implementation for the creation of a Regional Revolving Fund and for a Site Preparation and Site Improvements Fund as part of the Six-Year Transportation Program update. Action to date on these program requests was to include this category in the 7.4M Alternate Mode Reserve. This application supplants these prior two requests.



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Metro
TOD Implementation Program
\$7.0M

- Density increases of 50% or more
- Increase in number of transit, bike & walk trips: 50-60%
- Housing density increase up to 90%
- Parking ratios reduced by 50-75% on housing
- VMT reduction of 52% or greater
- Implements multi-modal elements
- Project is possible and can be started now
- High amount of public and private avoided costs
- Regional equity — projects throughout the region

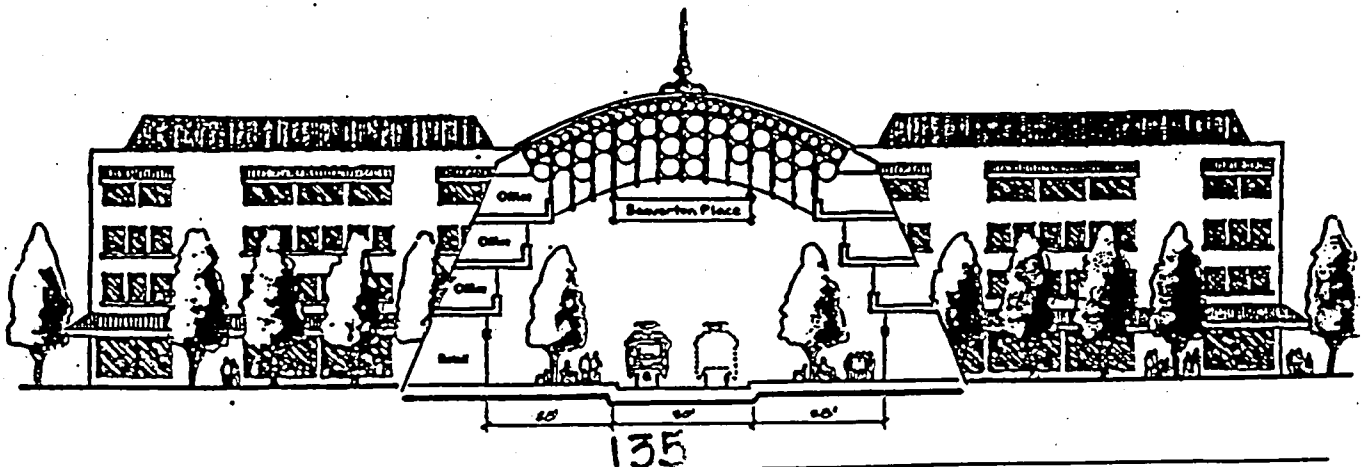
PROGRAM OVERVIEW

The TOD Implementation Program will provide \$7.0 million for a Regional Revolving Fund to acquire property at key areas immediately adjacent to a transit station for the purpose of TOD implementation and/or to make other public investments in a TOD project that encourage its implementation. Up to \$1.0 million of the total TOD Implementation Program may be utilized for these other activities which include site preparation and site improvements. (This portion of the implementation program funds will not contain the revolving fund provision.) The location of these TOD projects will be determined by a TGM funded study currently being undertaken by Metro, and will be based on evaluation criteria and other factors resulting from this study. This study is being coordinated through the existing regional framework for making transportation decisions. Areas that are being considered in this study for possible application of the Implementation Program elements include Central City sites and Regional Centers such as Downtown Beaverton, Downtown Hillsboro, Gresham, Clackamas Town Center and Milwaukie. In addition important LRT station communities such as Beaver Creek (formerly Murray West) and Peterkort will be considered. Parcel sizes that will be viewed as candidate sites will range from large scale greenfield sites to smaller infill sites. After a master plan is completed, that is consistent with local comprehensive plans, and a parcelization plan is in place, the Program will dispose of individual property parcels by Development Agreements or by ground lease to private developers for construction of housing, retail, office and other uses that will implement the TOD. Once the publicly acquired land is sold or leased to a private developer(s), the land sale and lease proceeds will be returned to the Regional Revolving Fund to be used to implement additional TODs.

The TOD Implementation Program will allow the state and region to consider alternatives to growth management and transportation planning that would not otherwise be feasible. It will, on selected sites, provide the foundation for a program that will alter land use patterns, densities, and designs to increase the use of transit, walking and biking. It will increase densities and improve mixes along transit lines and will implement plans that provide for transit supportive uses and densities along transit routes.

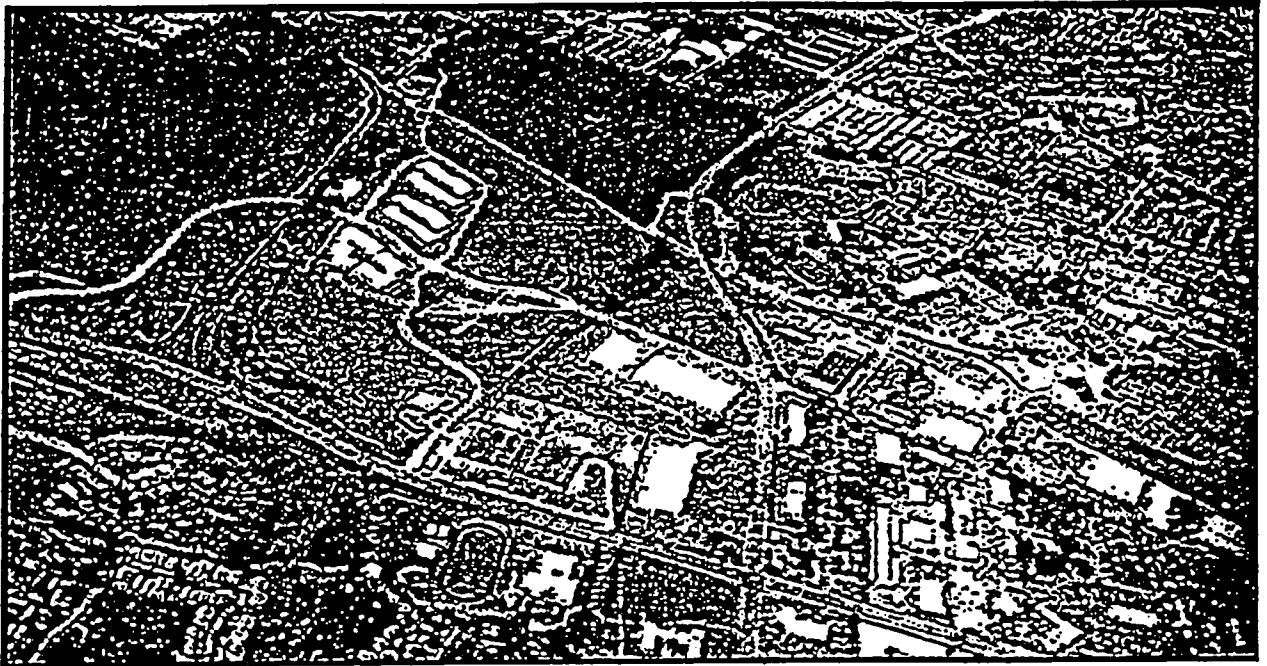


TOD Implementation will be applied at selected sites throughout the region.



ACQUISITION AND SALE/LEASE AS DEVELOPMENT TOOL

Assembling of development sites and sale or lease to a private developer(s) with specific conditions for design and construction is a proven public-private partnership tool. This public process of acquisition and the subsequent competitive offering of the property places the development into the hands of capable developers willing and able to implement a TOD or a portion thereof. It also provides the much needed "carry" on the land, between the time when the developer commits to a project and when the project receives private financing approval, since within the Development Agreement the deed is not passed to the developer nor payment received by the public agency until all pre-construction performances are completed by the developer.

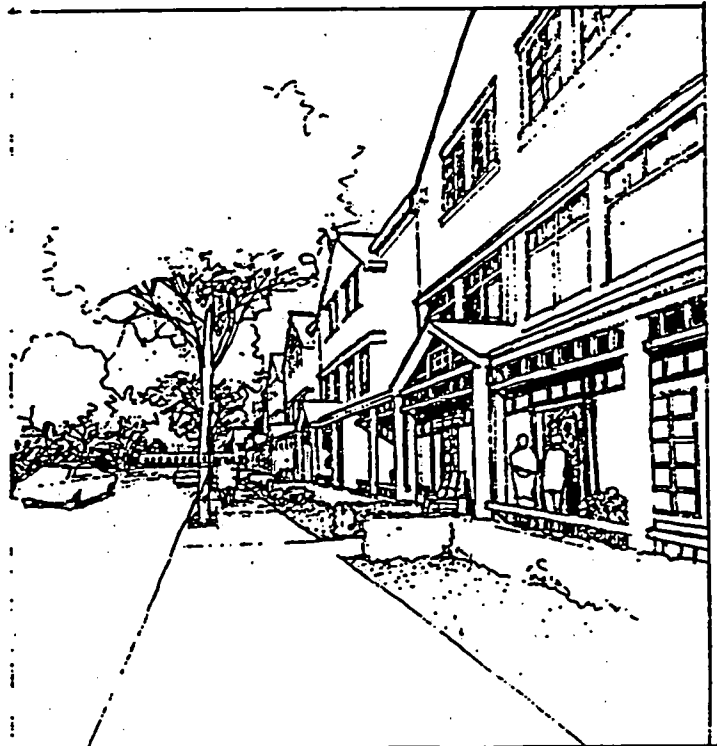


Large parcels of raw land offer excellent opportunities for TOD demonstration projects.

TOD IMPLEMENTATION PROVEN COST EFFECTIVE

The effectiveness of transit oriented development is well documented in national case studies, which indicate that capital programs for implementation are 8-14 times more cost effective in increasing transit ridership than are more conventional transit projects such as new rail starts or extension of existing lines.

If TODs are to play a major role in increasing the effectiveness of transit and reducing the reliance on single occupant trips, then a TOD Implementation Program is of primary importance.



This project in Gresham was the product of a Development Agreement and a CMAQ grant. Groundbreaking is expected soon.

REGION A LEADER IN TRANSIT/LAND USE LINK

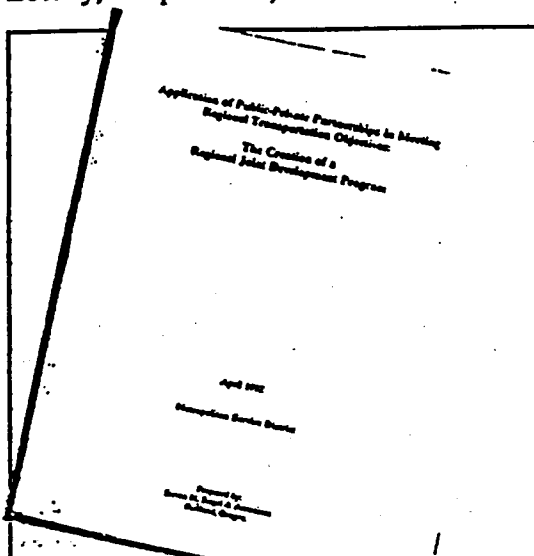
The Portland region has long recognized the importance of building on the land-use/transportation link in order to increase the effectiveness of its light rail projects. It has secured planning funds for station areas as part of both the Banfield LRT and the Westside. More recently, as a result of urgings from this region, FTA has proposed new funding regulations that provide land use a prominent role in FTA funding recommendations. In addition, both the DEQ program utilizing CMAQ funds for transit sensitive development and the work being done through a regional partnership including Tri-Met, Metro and local governments on station area community plans shows that the Portland area continues to be a leader in the land use/transit link.

NEED FOR TOD IMPLEMENTATION PROGRAM

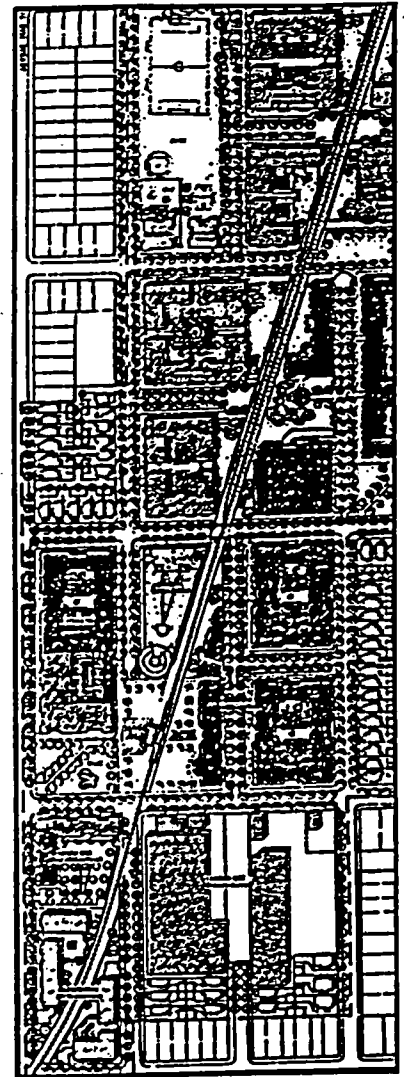
Notwithstanding these efforts, there has been a growing awareness that good transit supportive development will not automatically occur as a result of the construction of the track and station, especially as it relates to the provision of mixed-use projects including retail that are pedestrian oriented, and of higher density housing in close proximity to the station. Nor will good land use plans alone be enough to implement the kind of TODs consistent with an evolving regional vision. Instead, a full "deal-making" program to engage the private sector is needed to be certain that TODs become a reality. This will allow for a proactive process with the development community, and not merely rely on standards or regulations. The Implementation Program will ensure that some regionally significant TOD demonstration projects are undertaken and that the development tools necessary for this effort are in place.

The nationally recognized Urban Land Institute noted this need for a program, and in its landmark publication, "Joint Development: Making the Real Estate - Transit Connection", stated: "In short, practitioners are beginning to realize that joint development is not an inevitable result of the establishment of transit facilities. Rather, the successful implementation of joint development depends upon initiatives taken by the public and private parties who are aware of a wide variety of joint development techniques..."

Locally, in April 1992, Metro undertook a study by Steven Siegel and Associates to examine the prospects for a land use implementation program (joint development). The Siegel report stated "the single greatest inducement for joint development is public purchase of prime development parcels for purposes of competitive offerings."



Despite the documented need and regional significance for TOD implementation, no program has ever been put in place in this region that utilized public land acquisition and sale/lease back to private developers in order to implement transit sensitive development. (Tri-Met has, however, utilized Development Agreements on small R-O-W fragments to successfully induce private transit supportive development. This tool is extremely limited since the parcels are often small and not always in the best locations.)



Perhaps the strongest argument for the TOD Implementation Program is that it may be critical to advance future authorizations and appropriations of Section 3 "New Start" funds. Section 3010 of ISTEA calls out "land use policies and future patterns" as a priority consideration for USDOT's recommendations on such matters. A serious regional effort to implement a TOD program will allow the Region to *walk its talk* by hammering parcels of largely vacant land along the LRT corridors into dense urban villages. These developments of housing, retail and offices will strengthen ridership numbers for transit and will allow us to maintain a competitive edge for future federal transit capital funds.

This strategy — because our population and current densities are not "competitive" with other areas of the country — banks on the importance that Congress and FTA have placed on land use. Only then can our projected trip volumes be significant enough to compete for future federal transit dollars.

Most observers note that the Hillsboro LRT extension would not have been funded except for the increased ridership *projected* by land use plans and policies already in place. The Office of Management and Budget (OMB) was persuaded *only* by *these* arguments, not by other considerations.

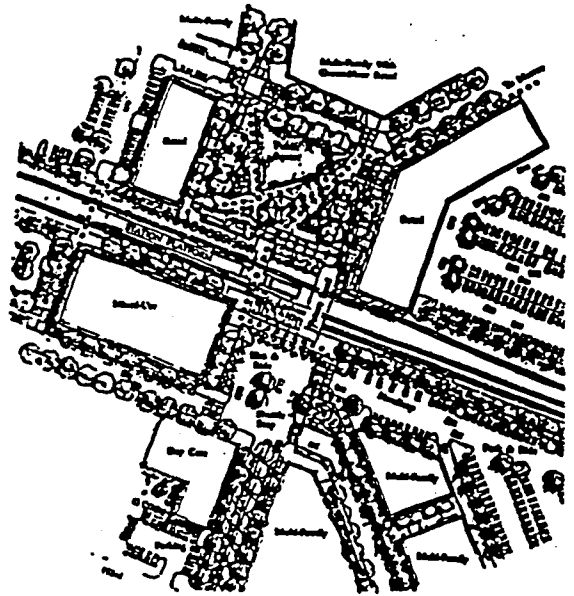
But planning alone will not be enough to deliver a difficult project(s). The TOD Implementation Program is an effort to demonstrate to FTA and Congress the region's continuing commitment toward innovative programs for making the land-use/transit link.

In April 1991, LCDC promulgated the Transportation Planning Rule. Cities and Counties must amend their regulations and comprehensive plans to encourage more transit, pedestrian and bicycle friendly development and street patterns in order to comply with the Rule. Local governments must also amend their comprehensive plans to allow transit oriented developments (TODs) on lands along transit routes. This proposed TOD Implementation Program will assist in setting higher commercial and residential densities and in implementing the TPR.

ELEMENTS OF PROGRAM

As stated earlier, the TOD Implementation Program will contain two programs — the Regional Revolving Fund, and the Site Preparation and Site Improvements Fund. Up to \$1.0 million of the total \$7.0 million funding may be utilized for this latter category for one or more of the selected TOD demo projects. In addition to property acquisition, eligible activities consistent with Section 3(a)(1)(D) include demolition of buildings, preparation of the site for development, site improvements for the development project, and direct administration expenses.

Site improvements include minor streets, sidewalks, lights, pedestrian connections, open space, plazas, building foundations, and utility capacity. These project elements have been considered eligible when the development project is physically and functionally linked to transit and when it enhances the effectiveness of an existing transit system. FTA is now providing policy guidance for these kinds of transit capital expenditures. This is historically important, and will signal the first instance this tool has been used since 1979, when FTA approved Baltimore's request to acquire development sites at its key transit stations with federal transit funds.



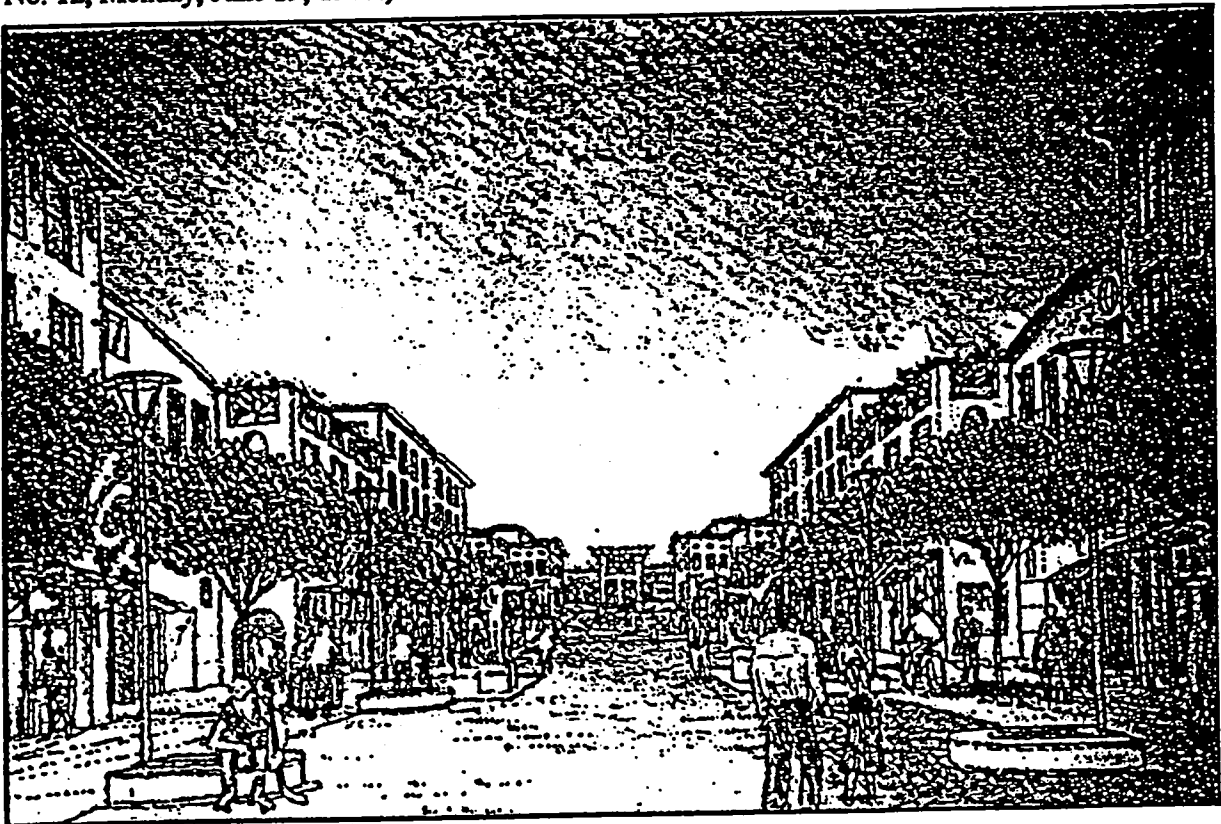
A variety of project elements are needed for a successful TOD.

PROGRAM ELIGIBILITY

Eligibility for this TOD Program is shown in the guide book, "Intermodal Surface Transportation Efficiency Act of 1991, Flexible Funding Opportunities for Transit," FTA, Washington, D.C., p. 10: "STP Project Eligibility - ... opportunities for Transit ... include all projects which might otherwise be eligible for funding under current FTA grant programs ..." FTA grant eligibility includes programs within the authority of Section 3(a)(1)(D), which allows for site acquisition when the development

project is physically and functionally connected to a conventional transit project and when the development project will enhance an existing mass transit project. This section of the Act essentially declares that "joint development" projects are transportation projects when the above conditions exist. The legislative history of the Transportation Act indicates Congressional intent for these activities to be eligible: "The bill [Transportation Act] amends Section 3 of the Act to Authorize the Secretary of Transportation to make...grants... for a number of purposes, including... the acquisition of land and the costs of preparing such land for urban development purposes... (see "Congressional Budget Office Cost Estimate," May 12, 1978 [still operative]).

In addition, the Rules and Regulations governing 3(a)(1)(D) published in the Federal Register state: "a) Eligible project costs for joint development projects include but are not limited to the following:...3) land acquisition..." Further, in paragraph 642.25 of these same Rules, joint development is defined as "projects that are eligible for funding... are commercial, residential, ... or mixed-use developments that are induced by or enhance the effectiveness of mass transportation projects..." (see p. 5822, Federal Register, Vol. 46, No. 12, Monday, June 19, 1981.)



CURRENT STUDY

TODs such as this one at Clackamas Town Center are being examined at locations through out the region.

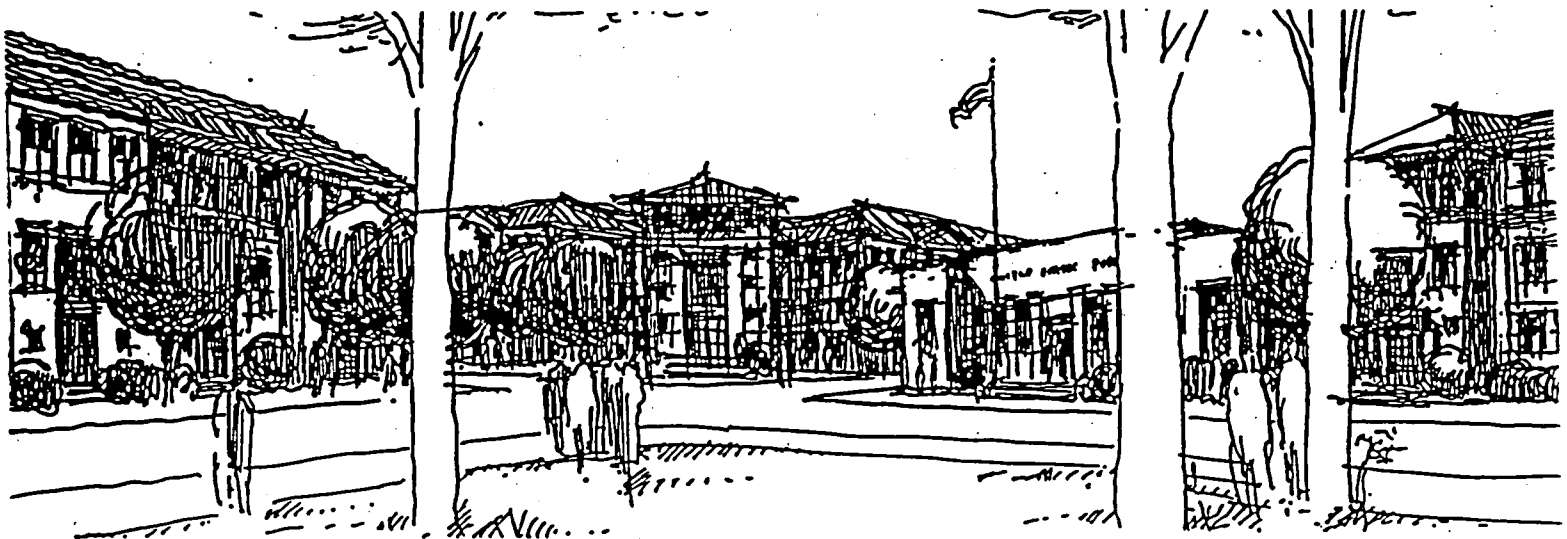
Metro was recently awarded a TGM grant for support activities and services for a TOD Implementation Program. The study, to be undertaken by Fletcher, Farr, Ayotte and Stephen Siegel and Associates has now received a notice to proceed from ODOT and will be completed by June 30, 1995. This TGM grant will result in several specific products, including: 1) definition of the role of government in implementing a TOD; 2) analysis of TOD implementation tools, funding options and criteria for public involvement of funding TOD projects; 3) implementing entity options; 4) site selection analysis; 5) property appraisal reports; 6) environmental scoping process on the selected site(s); and 7) draft Resolutions for creation of the TOD Implementation Program.

The intention of the TGM study is to bring the region to key decision points on creating an ongoing TOD Implementation Program. The existing regional framework for making transportation decisions will be utilized to provide guidance and input for the study.

Citizen Participation will have occurred at four different junctures:

- 1) The initial public hearings held by Metro and ODOT on the Six-Year Transit Program update that occurred in late 1993 and early 1994 included significant public testimony from a wide range of participants on the need and value for establishing a Regional Revolving Fund for acquisition of TOD sites and Site Preparation/Site Improvements for TOD Implementation. In fact, the TOD Implementation Program received as much verbal testimony in support of its funding as any of the other important conventional transportation projects. In addition, a number of letters were received in support of the TOD Implementation Program;
- 2) Metro's Regional Transportation Fair held at Metro Headquarters on January 26 received a number of comments concerning the need for establishing a TOD Implementation Program;
- 3) Citizen involvement for the specific TOD project will also occur or will have already occurred with the development of a plan or a station area plan. In many instances this already has occurred. As an example, as part of the Region's 2040 Land Use Concept, the Winmar site in Gresham has completed a number of public meetings and hearings that involved residents of the local area, representatives of the local business community, local and regional planners and other interest groups and individuals interested in a TOD project. This site may be one of the sites considered in the TGM study currently underway. In other instances it will have occurred as part of a specific area plan for a TOD being developed at the local level as part of the Regional Station Area Planning Program. An example of this is the efforts of Beaverton, Tri-Met, Metro and local property owners toward creating the Beaver Creek Plan for the area known as Murray West; and
- 4) Citizen involvement will be provided for policy setting for defining the amount and conditions for public involvement in the TODs. Metro's current TGM study referenced earlier for specific activities and services for TOD Implementation contains a provision for this. Citizen involvement will be provided through Metro's TPAC and JPACT policy committees and will utilize the mechanisms and policies that govern the conditions in which public notice is given. A technical working group will be established by Metro from regional participants including ODOT, JPACT for policy oversight, TPAC/MTAC and MPAC for other coordination with local government, other governmental entities including DEQ, representatives of regional interest groups, and representatives from the private sector including architects and developers.

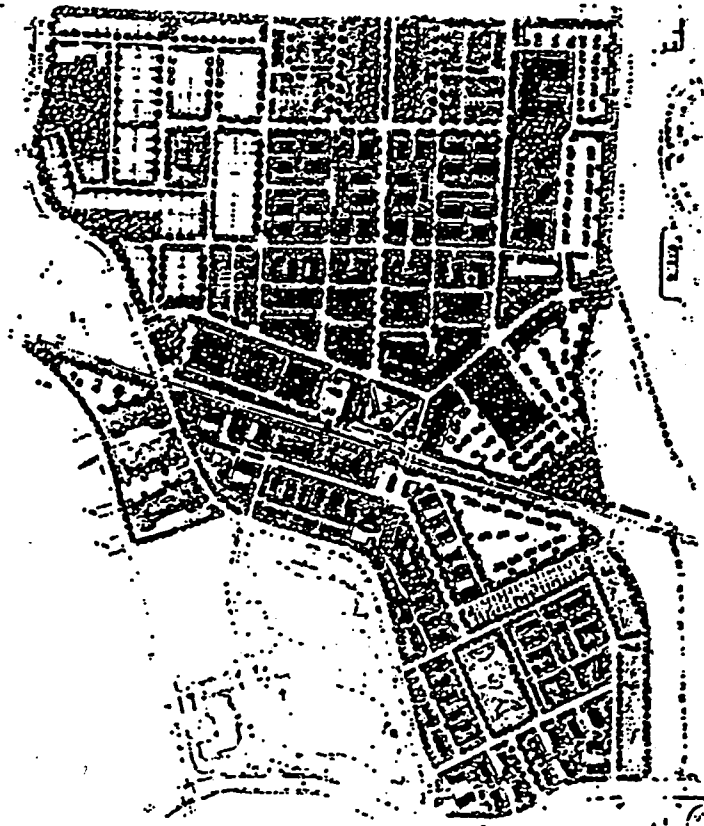
An important element of the TGM study will be to include development of a regional policy direction through JPACT in order to establish the circumstances within which regional public funds are to be expended on TOD projects. This would include delineating the public purposes vs. the private purposes of a TOD project, determining the amount of such public funding for a specific TOD project, the basis for



setting priorities for selecting TOD projects to implement, and determining public returns for public dollars spent. The establishment of a policy framework for the above will involve JPACT, Metro, and the Oregon Transportation Commission, especially as it may utilize transportation capital funds.

LOCAL MATCH

The local match will be provided on a case by case basis and may include otherwise eligible project elements to be provided by the developer, contributions of land value and/or property, and other developer contributions.



The Region will determine the type and amount of funding necessary for each TOD.

HOW MUCH PROJECT(S) WILL THE FUNDING BUY?

If the full \$7.0 M for TOD Implementation were to be utilized for the Regional Revolving Fund, the following purchases would be possible:

<u>Category</u>	<u>Est. Cost/sq.ft</u>	<u>Est. Total Acreage</u>
Raw Land (not yet parcelized)	\$1.00 or less	175 A.
Multi-family housing	\$1.75-\$2.25 net	85 A.
Large Scale Retail	\$3.50	40 A.
Office	\$6 - 8.00 net	23-27 A.
Small Scale Retail & Big Box Small Parcels	\$6 - 10.00 net	16-27 A.

As indicated above, the raw land buys the most parcel size. An advantage of raw land purchased at "wholesale prices" is to utilize those parcels of the development project that have no cost penalties that can be sold at "retail", to offset those portions that do. In a manner of speaking, this type of acquisition contains its own built-in "grants", to fund the public purpose or indirectly to "buy down" the more difficult portions of an overall TOD that have cost penalties. These penalties may be caused by increased density and higher construction costs, increased costs associated with structured parking, fire sprinklers and other costs. The disadvantage of raw land is that there are not many large scale raw land parcels available at "wholesale prices" in good locations. In addition, there will be more front end time needed for gaining planning designations.

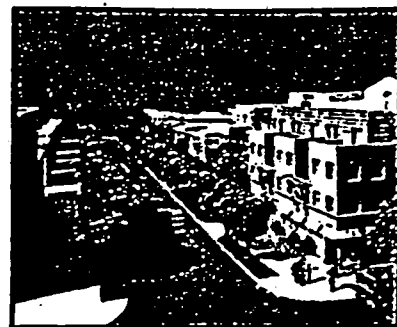
A more likely scenario for the Region to maximize its resources and impacts is to purchase selected portions of TOD's. This could be an area adjacent to the station, or a parcel or parcels with difficult development expectations that particularly require a public-private partnership to ensure success.



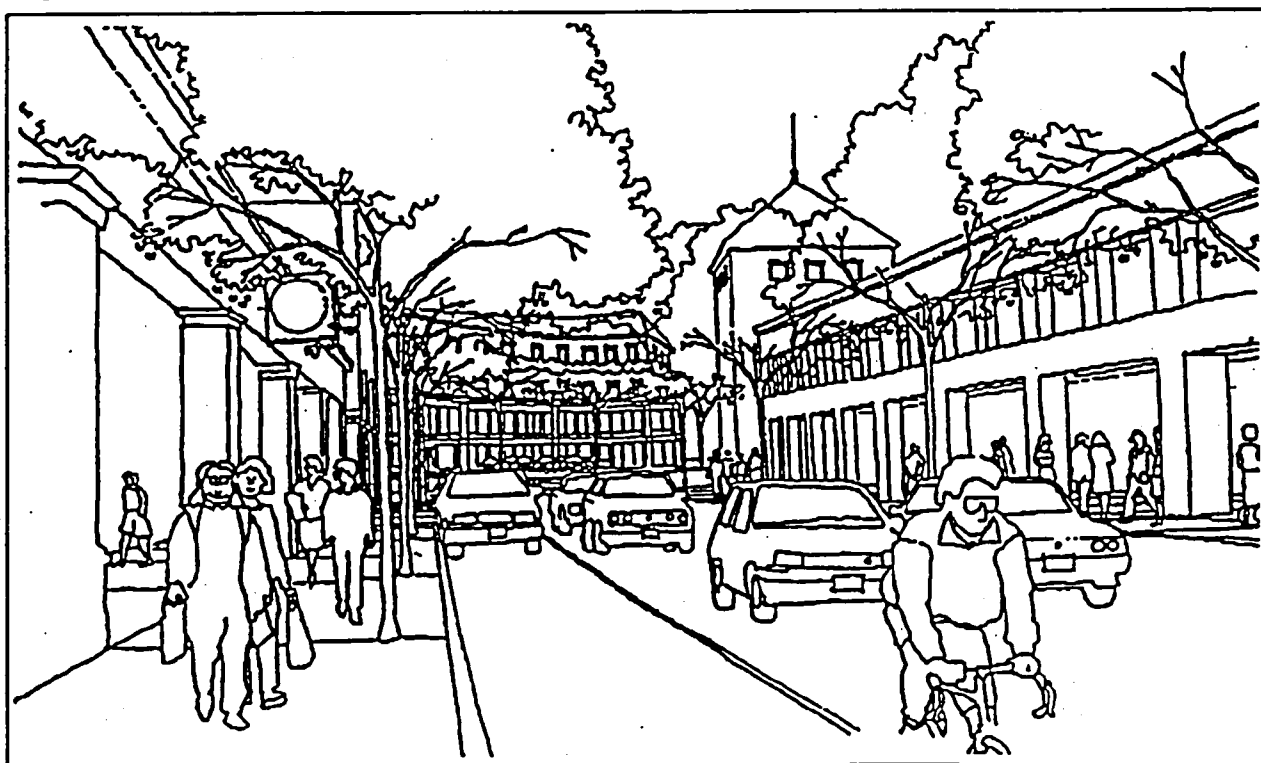
A PROTOTYPICAL PROJECT

A prototypical project for purposes of this funding request will consist of a major TOD located in the Central City or a regional center at a LRT station on the Banfield, Westside or a planned station on the South/North corridor. If located in a regional center, the TOD will contain 1850 housing units on 45 acres. Twenty-five acres of the project will consist of densities of 30 units/acre (net) or 60 persons per acre. Twenty acres of the project will be for densities of 55 units/acre (net) or 110 persons per acre. This higher density housing portion will be concentrated on the parcels nearest the transit station. In addition, the TOD will include 175,000 sq.ft. of retail with housing, offices or other uses above, and 60,000 sq.ft. of office. The densities for the entire housing portion will average 38+ units/acre or 75 persons per acre. This represents a building density nearly double of typical suburban multi-family development (assumed to be 20 d.u./A.). The commercial densities will be 50% or higher FAR than is typical for suburban development with buildings 2-4 stories in height. The entire development will be clustered within 1/4 mile radius of the station, built along strong pedestrian and bike connections.

If the TOD is within the Central City, it will contain much more significant densities, consistent with the Region 2040 Land Use Goals.



National case studies indicate that capital funds expended on transit supportive development are 8-14 times more cost-effective in inducing ridership than new rail starts.



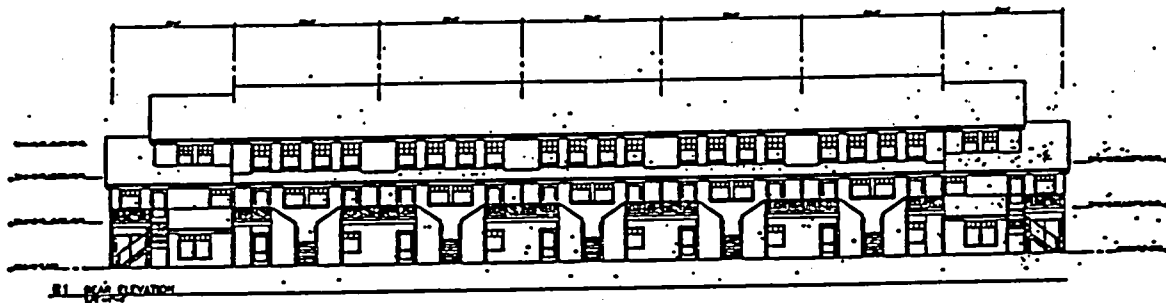
The planning of this TOD, called Gresham Civic Neighborhood, is currently underway; it will emphasize alternative modes.

RESPONSE TO "INCREASE MODE SHARE" GOAL

The demo TOD projects that will emerge from this funding will be 50% or greater in building density (densities of 30-55 units/acre for multi-family, with 25-75% reduction in parking), with strong pedestrian and bike amenities built into the design. The entire TOD will be constructed around an LRT station. The impact of these design elements will create a project that will increase the number of transit, bike, and walk trips by 50 - 60% or more over the number contained in a project that did not receive these public funds for the TOD project(s).

RESPONSE TO "DENSITY CRITERIA" GOAL

The TOD projects completed within this program will increase the density by 50% or more within a 1/4 mile radius of the LRT station. Multi-family housing will be constructed at densities from 30 to 55 units/acre as compared with a base case for suburban development of approximately 20 units/acre. Two prototype projects currently being designed on the Banfield LRT are examining methods to push up the density without incurring large cost penalties. One 3 story project currently in design review will result in densities of 33.3 units/acre.



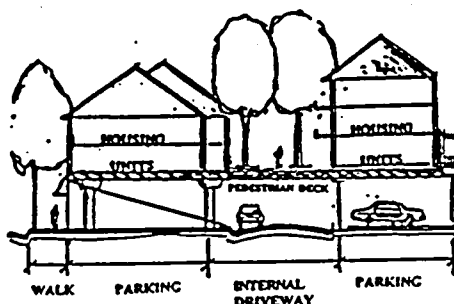
Gresham Central Project

Another small project in preliminary design indicates densities of 52-57/units per acre may be achieved.

Both housing projects have parking ratios of 1.5 to 1 as compared to more typical 2.0-3.0, and are being demonstrated on parcels of land owned by a public entity and sold to a developer through a Development Agreement (which is the process envisioned to be utilized for the Regional Revolving Fund). In addition CMAQ funding is being used for some of the specific project elements.

Commercial and retail FAR's will be increased by 50% or more with parking reduced to accommodate the increased density.

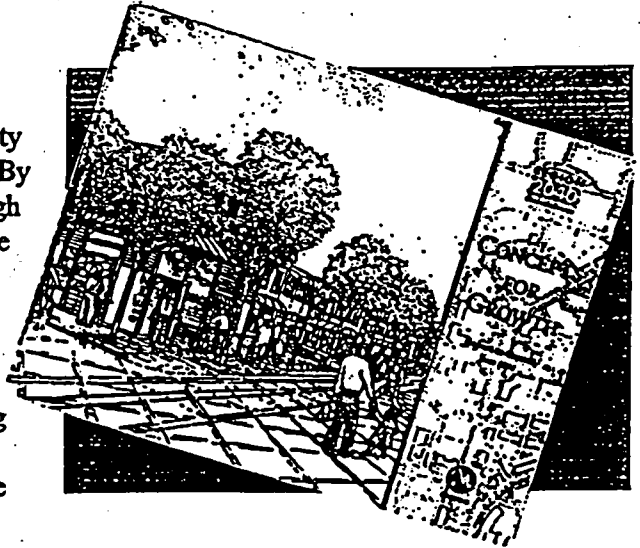
The overall density of the project, taking into consideration multi-family housing, office, retail and other will be 50% or greater density as compared to more conventional development.



This small infill project is located adjacent to the MAX station at 172 & E. Burnside. It's being developed at 55 units/acre with a Development Agreement. A public agency owns a portion of the ground on which the project will sit; thus, the project demonstrates an effective public-private partnership. Design challenges include placing parking beneath the dwellings without incurring the prohibitive cost penalties of podium construction.

RESPONSE TO "2040 CRITERIA" GOAL

This project will allow for the demonstration of a number of building types and systems of higher density with lower parking ratios than will otherwise occur. By acquiring land and selling development parcels through Development Agreements with specific conditions, the region will have the best opportunity possible to achieve its goals. This kind of true public-private partnership has been successful in a number of outstanding projects throughout the region. This program will result in a series of TODs along existing and proposed LRT corridors that demonstrate how to accommodate growth within Regional Centers and the Central City.



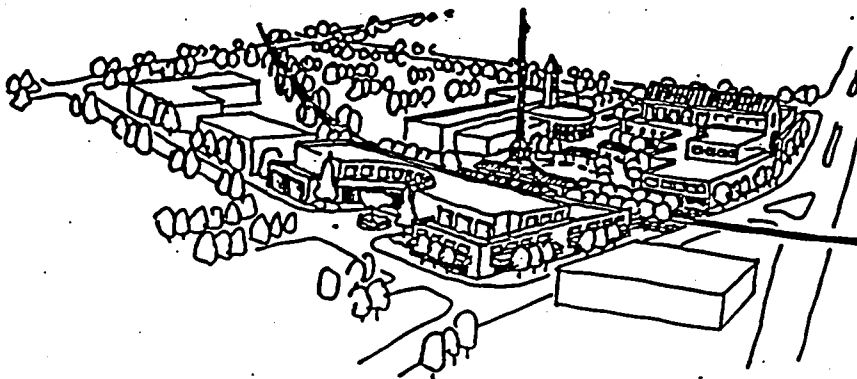
RESPONSE TO "COST EFFECTIVE CRITERIA" GOAL

Kittelson and Associates has estimated that a properly developed TOD can reduce VMT by 52% as compared to typical suburban developments. Such a high per cent reduction assumes the kind of densities and design expressed in this program request. More important is that this request will establish a Regional Revolving Fund. The money for the land will not be "spent" in the conventional sense of the word, and the proceeds of a lease or sale will be rolled into another TOD project of similar criteria. This unique feature of a Regional Revolving Fund would theoretically allow the benefits to accrue forever; however, as a practical matter, the fund would probably diminish over time. Even so, it is expected that 3-5 rollovers could be possible before the fund is depleted which will impact the VMT reduction by an additional 300-500%.

RESPONSE TO "IMPLEMENT MULTI-MODAL ELEMENTS" GOAL

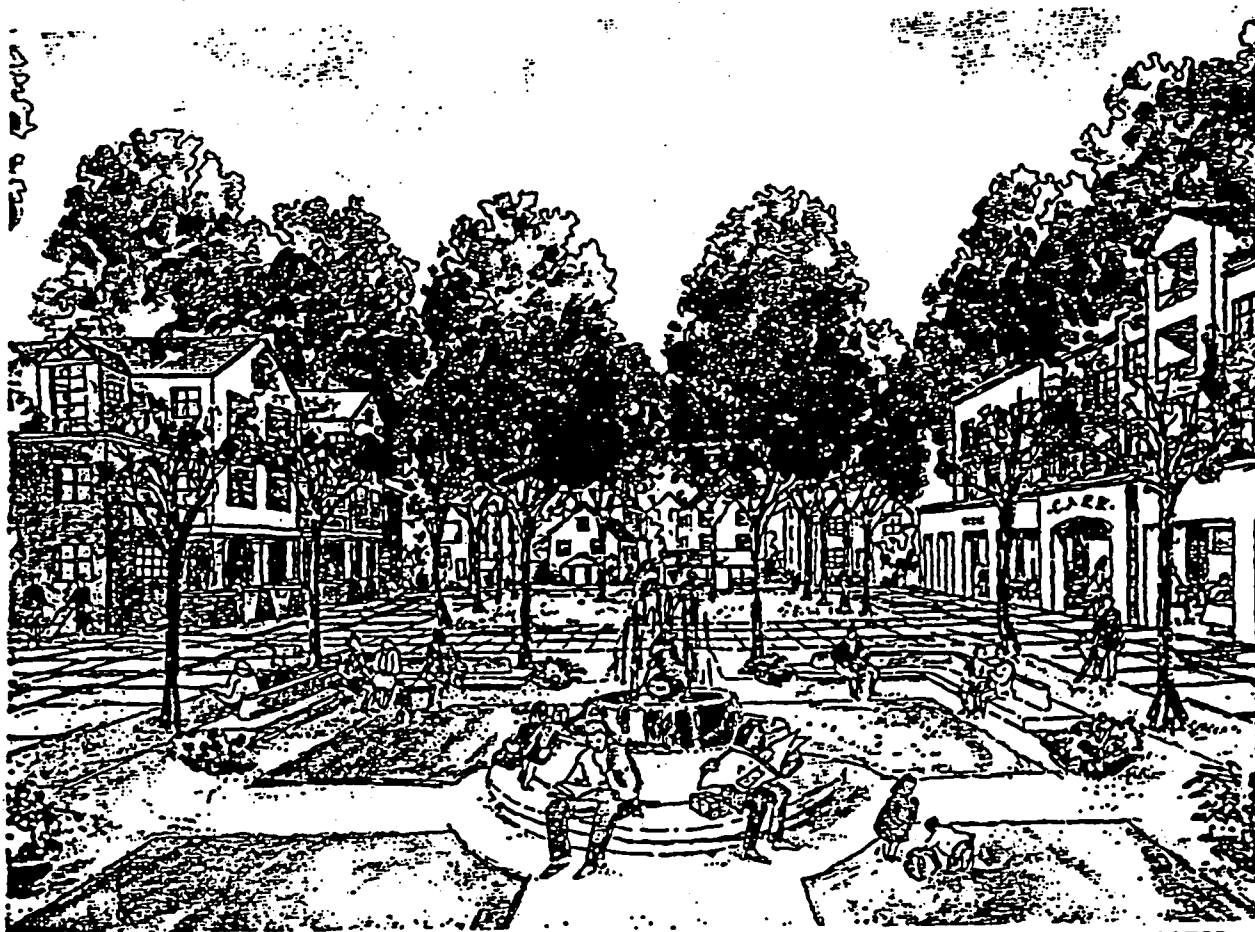
Each of the TOD projects will contain strong design provisions to benefit multi-modes. Since these projects will be new development, all four modes will be designed to be maximized. The projects will be of relatively dense design, of mixed use (housing, retail, office, recreational), with the building fronts oriented to activate the strong pedestrian links that will be a dominant element of the project. In addition, bike paths and other provisions for bicycles will be designed into the initial plan to be certain they are not a "tacked-on" after-thought. The entire development will be organized so that all of the project activity will focus towards the transit station.

Other criteria that should be considered in the administration evaluation should include:



Local Commitment - the project will derive the local match requirements from project eligible elements of the development, land value contributions, and/or property contributions from the developer.

Implementation Feasibility - The Regional Revolving Fund



High quality pedestrian environments are essential to successful TODs.

can be established, the first sites selected, and the property purchased, within one year or less. In fact, acquisition of a TOD site is the easiest of all TOD project type activities to be accomplished.

In addition, the initial parcels could be processed into Development Agreements and the first development under construction within 1 to 2 years thereafter.

Avoided Costs - The initial costs will be significantly offset by the costs of not constructing roadway improvement, other public and private infrastructure costs and the fact that the land sale proceeds will substantially recover the initial capital investment.



Regional Equity - The project will have the highest amount of regional equity: a) the funding will be spent on projects throughout the region—east, west and south; b) the projects selected will be in strategically important locations to maximize the larger regional goals that implement the 2040 Goals. It will be a cornerstone to implement the regional vision that is evolving - to grow up, not out; to increase alternative modes; to provide options through better design; to set the art of what is possible by example; and to accomplish this in a cost effective manner. If higher densities with lower parking ratios are needed for the regional vision, then this can best be demonstrated through a TOD Implementation Program. These TOD projects will be located in various parts of the region: Central City or Regional Centers such as Beaverton, Hillsboro, Gresham, Clackamas Town Center and Milwaukie. They may also be located in LRT station communities. In addition, regionally important goals and interests concerning the direction and type of growth for the entire region will be expressed in these TOD demonstration projects.

PBW/MG

**Intermodal Surface Transportation Efficiency Act
Sec 3010 . CRITERIA FOR NEW STARTS**

(C) shall identify and consider transit supportive existing land use policies and future patterns, and consider other factors including the degree to which the project increases the mobility of the transit-dependent population or promotes economic development, and other factors that the Secretary deems appropriate to carry out the purposes of this Act.



TIP UPDATE

PROJECT NOMINATION FORM

Project Name

TOB IMPLEMENTATION PROGRAM

Sponsoring Jurisdiction (i.e., provides match & must be same as nominating jurisdiction)
Metro

Est. Project Cost: \$ 7M

Match Funds Committed: Yes ☐ No ☐
Indicate Overmatch, if any:
% Committed = see textProject Complete by FY '98? Yes ☒ No ☐

Approval Status:

Addressed in 1992 RTP? Yes ☐ No ☐Referred from County Coordinating Committee? Yes ☐ No ☐Derives from Local Capital Improvement Document? Yes ☐ No ☐Project Was Subject to Local Public Hearing? Yes ☐ No ☐

see text

Project Type:

☐ Road Expansion☐ Road Preservation (no SOV capacity increase but may add right-of-way for bikelped amenities)☐ Transportation System Management (includes ATMS, access control, striping, etc.)☐ Transit Capital☐ Bike & Pedestrian☒ Transit Oriented Development☐ Transportation Demand Management

Project Description:

Facility: _____

Project Length: _____

Termini:

From: _____

To: _____

Project Focus:

☒ Urban Center
☒ Regional Center
☐ Industrial Sanctuary☐ Town Center
☐ Main Street
☐ LRT Station
☐ Bus Corridor
☐ Neo-Traditional Community☐ Mixed-use Employment Area
☐ Traditional Single Family Neighborhood

Qualitative Discussion: see text

Supporting Letters

Architectural Foundation of Oregon

950 Lloyd Center, Box 44
Portland, Oregon 97232
Phone/Fax: (503) 287-8296

March 15, 1995

JPACT and Metro Council
600 NE Grand Avenue
Portland, OR 97232-2736

Subject: TOD Implementation Program

Dear JPACT and Metro Council Members:

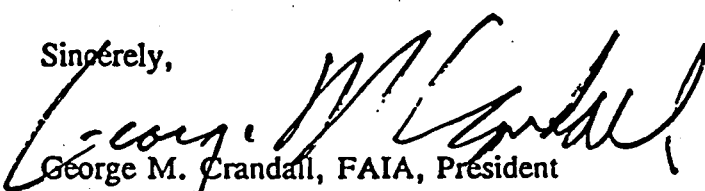
The Architectural Foundation of Oregon (AFO) is active in regional planning issues throughout the state. Our publication, *A New Approach to Regional Planning*, December 1993, will be followed by additional AFO research and publications supporting actions promoting good development.

We consider the TOD Implementation Program to be the essential building block in the region's efforts to promote and stimulate the right kind of development adjacent to transit stations. Our recent experience indicates a critical need for the Regional Revolving Fund to assemble station area land as the first step in promoting development consistent with TOD design principles (high density development, a mix of uses and a well-defined, pedestrian circulation system). We are finding that piecemeal development in station locations is promoting low density suburban development with the emphasis on autos, not transit.

In addition, we support the Regional Revolving Fund provision for using up to 1 million dollars for site improvements for a demonstration TOD or TODs. We believe that capital expenditures for the right TOD-related improvements can be the trigger for substantial private sector TOD investment.

The Regional Revolving Fund will be a valuable tool in the region's efforts to promote transit ridership and reduce reliance on the auto. We enthusiastically support the proposal.

Sincerely,


George M. Crandall, FAIA, President
Architectural Foundation of Oregon

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Jo Ann (Jody) Proppe, Hon. AIA

C:\AIA\GMC04

149



Conserving Land
for People

March 9, 1995

Andy Cotugno
Metro
600 NE Grand Ave
Portland, OR 97232

Dear Mr. Cotugno:

I am writing to express support for the creation of a transit oriented development land acquisition revolving fund (TOD Implementation Program) as part of the region's Transportation Improvement Plan and Metro's Region 2040 Implementation Program.

For several years, there has been much talk about the benefits of transit oriented development, largely as a result of proposals from Andres Duany and Peter Calthorpe. However, other than specific buildings along the Banfield MAX very little progress has been made. By committing public funds to acquire, and temporarily hold key properties along transit corridors I believe the region will be making the first substantive step toward achieving the goal of transit oriented community developments.

The TOD proposal could play a tremendous role in helping the region channel growth within the existing UGB, without compromising the livability citizens have come to expect from our community.

Apparently, Tri-Met has a stated goal of encouraging as many as half of the new residents in the Metro area to live within a short distance of a light rail station or bus stop. This is a worthy goal, but it cannot be achieved unless a new urban development pattern is implemented throughout the region. This new pattern should be based much on the urban environments which were built all over the country around the turn of the century. These new development schemes will be more compact than the post-War cul de sac subdivision. They will have a more efficient road system utilizing street grids. They will have usable parks,

The Trust for Public Land
Oregon Field Office
1211 SW Sixth Avenue
Portland, OR 97204

(503) 228-6620
Fax (503) 228-4529

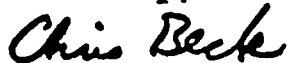
rather than gratuitous or enforced set asides. They will encourage more pedestrian activity and transit use. Finally, these "neo-traditional" communities will utilize our developable land supply far more efficiently than has been the case with development over the last 25 years.

Many will argue that this type of new development can and will occur if left solely to the forces of the private market. Unfortunately, a common perception among some development interests is that the market for compact living environments is limited or would not be highly profitable. This perception tends to limit private attempts at developing transit oriented subdivisions. Only with the assistance of government will high quality TOD's be given serious attention by the private sector.

After a few model demonstration projects are completed, with help from this revolving fund, I am confident that other appropriately designed projects will eventually follow on the open market. It is often up to government to instigate good and sometimes costly, ideas. This revolving fund is a low cost method of spurring the type of development that is so essential to making our transportation system work more effectively. A revolving fund is a wise long term use of our transportation dollars.

In short, if the metro region is going to provide attractive residential and mixed use environments as an effort to direct new growth within the existing UGB, it is imperative that Metro take the lead at spearheading the development of high quality "neo-traditional" communities along light rail and bus corridors. The TOD proposal is essential to achieving this goal.

Sincerely,



Chris Beck
Project Manager

cc Mike Burton



TO: JPACT and Metro Council

FROM: AIA Urban Design Committee

SUBJECT: TOD Implementation Program

- Regional Revolving Fund
- Site Improvement/Site Preparation Fund

DATE: March 14, 1995

Dear Members of JPACT and Metro Council:

The Portland American Institute of Architects (AIA) Urban Design Committee has reviewed both the Regional Revolving Fund Proposal and the Site Improvement Fund Proposal. The AIA Urban Design Committee supports both concepts.

REGIONAL REVOLVING FUND

Our experience indicates that if the region is to experience transit supportive development, the public sector must take the initiative in the assembly of land parcels around transit stations. The revolving fund would provide the financial mechanisms needed to ensure that development patterns and densities support the substantial public investment in transit. The lack of site assembly capabilities around stations results in low densities, piecemeal development and reduced potential for improving transit ridership.

SITE IMPROVEMENT FUNDS

Many of the region's most successful developments have been stimulated by highly visible public expenditures (roads, parks, public amenities, infrastructure). These expenditures indicate a public commitment which increases investor confidence and interest in an area's potential. Site improvement funds can be the catalyst to make something happen.

In summary, the proposed funding concepts will be valuable tools in the region's efforts to stimulate transit supportive development around transit stations.

JPACT and Metro Council
March 14, 1995
Page 2

The AIA Urban Design Committee believes that both funding concepts should be approved. We strongly urge your support.

Sincerely,



Garry Papers, AIA
Chair, AIA Urban Design Committee



Marcy McNelly, AIA
Chair, Planning Subcommittee

GP/MI/jh

C:\AIA\GMC03

Supplemental Information

Project: TOD Implementation Program
Regional Revolving Fund

\$10.0M

Agency: Metro

Program: This application by Metro is to provide an implementation program for Transit Oriented Districts (TODs). The program will provide \$10M funding for a Regional Revolving Fund for site assembly of key light rail station area land. After a master plan is completed consistent with local comprehensive plans, and a parcelization plan is in place, the program will dispose of individual parcels by Sale and Development Agreements or by ground lease to private developers for construction of building improvements. The proceeds from the sale or lease of the property will be returned to the Regional Revolving Fund for use on other TOD implementation plans. Initially, the focus of this program will be selected station areas along the MAX route and the proposed Westside LRT. Eventually, the program could include the north/south corridors.

Project Definition: For purposes of utilizing the STP funds, the project definition will include property acquisition of TOD and station area sites that are physically and functionally connected to an LRT station.

Land Use Implementation - TOD as Cost Effective Means of Increasing Ridership: Transit capital projects are ultimately analyzed by the equation of increasing transit's modal share of total trips in the region. FTA capital projects are analyzed in "costs per induced rider". All projects are viewed with this yardstick including MAX, Westside LRT, bus replacement, intermodal connections, etc. National case studies have documented that land use implementation programs (Joint Development) are 8 - 14 times more effective in inducing transit ridership than are more conventional transit projects including new rail starts and extensions of existing lines.

Eligibility: This program is legally eligible, although the past two administrations for policy reasons have not approved such programs. The current FTA administration has indicated a willingness to approve projects with existing funds for any eligible activity for land use implementation/joint development programs. Eligibility for the program is shown in the guide book, "Intermodal Surface Transportation Efficiency Act of 1991, Flexible Funding Opportunities for Transit," FTA, Washington, D.C., p. 10: "STP Project Eligibility - ... opportunities for Transit under the 80% General Purposes Apportionment include all projects which might otherwise be eligible for funding under current FTA grant programs excluding FTA Sec. 9 operating assistance." FTA grant program eligibility includes programs funded within the authority of Section 3(a)(1)(D), which allows for site acquisition when the joint development project is physically and functionally connected to a conventional transit project and when the joint development project will enhance an existing mass transit project.

Project: TOD Implementation Program
Site Improvements/Site Preparation Fund

\$5.0M

Agency: Metro

Program: This application by Metro is to provide additional implementation capabilities for Transit Oriented Districts (TODs). The program will provide \$5M funding for site preparation and site improvements for selected station areas of Transit Oriented Districts (TODs) for purposes of joint development. This program is to work in tandem with the Regional Revolving Fund for site assembly, but it may also work independently on other selected station areas that are not part of the Revolving Fund acquisitions. The site improvements will be installed in specific joint development projects along the MAX route and on the proposed Westside LRT.

Project Definition: For purposes of utilizing STP funds, the project definition will include site preparation and site improvements for joint development projects within a TOD or station area that are physically and functionally connected to an LRT station or proposed station.

Land Use Implementation As Effective Transit Capital Project: Independent studies indicate that joint development, utilizing site preparation and site improvements funds, is a cost effective means of increasing transit ridership, significantly more effective than traditional transit projects such as new rail starts or extensions of existing lines. Numerous case studies have indicated that joint development does not just happen as a result of the construction of the transit station. Instead, a full "deal-making" program to attract the private sector is needed to be certain that TODs become a reality.

The Urban Land Institute in its landmark publication, "Joint Development: Making the Real Estate - Transit Connection", states: "In short, practitioners are beginning to realize that joint development is not an inevitable result of the establishment of transit facilities. Rather, the successful implementation of joint development depends upon initiatives taken by the public and private parties who are aware of a wide variety of joint development techniques..."

Eligibility: This program is legally eligible for FTA capital grant funds. Section 3(a)(1)(D) of the FTA Act allows site preparation and some site improvements as an eligible cost.



February 27, 1995

Lidwien Rahman
TGM Grant Manager
Oregon Department of Transportation
123 NW Flanders
Portland, OR 97209-4037

Subject: Metro TOD Implementation Program
Contract No. 13406 - File No. 1AA

Dear Lidwien:

In response to your letter of February 10 the following items are enclosed:

- Re-labeled Exhibit B as Exhibit A, part 1
- Statement on last page of Exhibit A moved to new Exhibit A, part 1 (last page)
- Exhibits C and D relabeled to be part of Exhibit A, part 1
- Detailed cost proposal for Steven Siegel
- Reference to assistance in creating a Steering Committee and hours allocated (Task 0)
- Scope amendment to address both public and private roles (Task 1)
- Provision for including TOD criteria in the Technical Memorandum (Task 1 - Criteria for TOD projects)
- Clarifications concerning presentations (level of effort chart)

I hope the enclosed is sufficient to allow finalization of the contract. If you need additional information, please contact me.

Sincerely,

FLETCHER FARR AYOTTE PC

A handwritten signature in dark ink, appearing to read 'George M. Crandall'.

George M. Crandall, FAIA
Principal

GMC:jh

Copy: E. Barry

J:\151995\ICOR\GMC09

WORK PROGRAM

0) PROJECT STARTUP

The FFA team is staffed to start the project as soon as authorized by Tri-Met. Our recent experience in finalizing ODOT/TGM contracts should help Tri-Met expedite the ODOT contract approval process. The team will assist in the creation of a steering committee through discussion with Metro and Tri-Met.

1) POLICY FRAMEWORK

Steve Siegel will be responsible for the following work tasks:

- Role of government
- Implementing Tools
- Sources of Funding
- Work task memorandum or report

FFA will be responsible for

- Criteria to judge public investment in candidate TOD projects

The description of work in the RFP is in italics with our comments following.

Role of Public & Private Sectors

The first subtask will be to provide an analysis of the appropriate role of government (regardless of the institutional arrangement) in TOD implementation. The report will list specific roles and responsibilities for government entities as opposed to private parties, define the "public purpose/return on public investment, and delineate public vs. private purpose. The purpose of this subtask is to establish the framework for making public investments in future TOD projects.

Initial technical research will focus on major existing federal, state and local policies and programs which relate to or are pertinent to a Transit Oriented District (TOD) program. The consultant will work with staff to determine a final list of such policies and programs which, at a minimum, would include [a] the objectives, policies and criteria established in ISTEA, [b] the criteria established by FTA for Section 3 funding recommendations, [c] the State Transportation Planning Rule, [d] the State (air quality) Implementation Plan for the Portland Region, [e] Urban Renewal legislation and resulting local programs, [f] the Region 2040 Concept Plan, the Regional Transportation Plan, [g] local comprehensive plans and related development strategies (such as the City of Portland's Livable City Housing Initiative) and [h] others.

An interim Technical Memorandum will identify stated or implicit themes of the existing policies and programs which already are accepted as defining the "public purpose" for governmental involvement in facilitating TODs. It will also identify and recommend how to fill gaps in the existing composite definition of "public purpose" and recommend a complete and workable definition of "public purpose" for a TOD program. Based on the definition of "public purpose," the roles and responsibilities of public entities will be delineated. In addition, the Technical Memorandum will delineate the role and responsibilities and purposes of the private sector participants.

The interim Technical Memorandum will be reviewed with staff, the Steering Committee and, if the Steering Committee has insufficient breadth for this purpose, with other interested local government and private sector parties to see if the definition of "public purpose" works. A final Sub-Task Report will be produced based on the comments.

Implementing Tools

The second subtask will analyze the effectiveness of various development tools for project implementation. This will be accomplished by discussing alternative development tools, providing examples of success and non-success with each of the tools, and recommending action. Development tools to be examined will include the public purchase of property adjacent to transit stations and the sale and/or lease of that property to a private developer with specific conditions for TOD development. Other tools to be considered will include the provision of site preparation, site improvements and site utilities for a TOD that is directly adjacent to a transit station. The consultant will conclude with a recommendation of development tools and mechanisms to be used generally for a successful TOD Implementation Program, particularly for a demonstration project or projects.

A similar approach to that employed in defining "public purpose" will be used to evaluate "implementing tools". Specifically, this region has a long history of governmental involvement in facilitating desired types of private development which can be researched to see what has worked and what has not. Specifically, the consultant will research projects undertaken by the Portland Development Commission, the Clackamas County Urban Renewal Agency, the Hillsboro Urban Renewal Agency and others deemed relevant by staff. This research will include, but will not be limited to, interviews with project managers in these agencies aimed at determining the effectiveness and applicability of the tools they used in their projects. Interviews will also be undertaken with the private sector parties involved in such projects to gain their perspective. If deemed necessary by staff, some national research would be included, but the emphasis would be on what has worked in Oregon.

An interim Technical Memorandum will be prepared which assesses potentially applicable tools. The consultant will work with staff to determine a final list of included tools which, at a minimum, would include [a] land assembly, [b] land acquisition and resale at "reuse values", [c] public funding of site preparation including related infrastructure and/or amenities, [d] property tax or other tax abatements or credits, [e] low interest loans, [f] government supported credit enhancements, [f] regulatory assistance, [g] local improvement districts and [h] others. These tools will be assessed as to their practical availability to a TOD program, their potential effectiveness, when they should be used and when they should not be considered.

The interim Technical Memorandum will be reviewed with staff, the Steering Committee and, if necessary, with other interested local government and private sector parties. A final Sub-Task Report will be produced based on the comments.

Sources of Funding

The third subtask will explore various funding options for these implementation activities including: 1) ISTEA-FTA; 2) ISTEA-FHWA; and 3) other sources of federal, state and local funds. The report will discuss the pros and cons of each potential funding source, and will estimate the amount potentially available and likelihood of its use.

The consultant will evaluate the authorities, policies and practices relating to Surface Transportation Program (STP) funds (both those generally available and those formula allocated to "Enhancement" activities), National Highway System (NHS) funds, Congestion Management and Air Quality (CMAQ) funds and other federal funding categories including non-DOT sources. The general availability of these funds will also be assessed. As well known by Tri-Met/Metro/ODOT staff, there are critical questions regarding these funds, in particular some associated with eligibility, which currently have no clear answers. The consultant would work with staff, as appropriate, to seek some determinations on these matters prior to the reorganization of the Federal Transit Administration.

As necessary as federal funds may be, for a TOD program to be ultimately successful, it will need access to local funds. This could take two possible forms: [a] actual revenues to be used for development/redevelopment activities and/or [b] cost avoidance incentives. The consultant will research local revenue sources which have been discussed in the region, as appropriate, such as: [a] capturing utility costs savings derived from higher density and using revenues for projects which create that higher density, [b] "Return on Investment" financing such as used for the new arena, and [c] others. The consultant, as described for the "Implementing Tools" subtask, will research "cost avoidance" incentives such as property tax abatement for multi-family housing, government backing for construction or take-out loans and others.

As in the previous subtasks, an interim Technical Memorandum will be produced for review and a final Sub-Task Report will be produced based on the comments. The three Sub-Task Reports will then be merged into a Policy Report. The consultant will be available present the Policy Report to TMAC, TPAC, MPAC and/or JPACT, as appropriate.

Criteria for TOD Projects

The fourth subtask will be to develop a set of criteria to judge public investment in candidate TOD projects. The consultant will examine successful projects including DEQ/CMAQ, applicable criteria for capital expenditures in FTA, and criteria in other federal capital programs. This criteria may include: a) location of the land parcel relative to transit, b) ability to create physical and functional link between the development and transit, c) total impact on the transit system in terms of overall ridership, non-peak demand ridership, and reverse flow ridership, d) costs per induced rider, e) impact to region, f) ability to move the project forward, g) present value of added farebox revenue relative to public funding less recapture from sales proceeds, if any, h) ability of the project to manage regional growth, i) leverage of public monies to private monies, j) opportunity to create a regionally significant project to serve as a model, and k) the ability to recapture land sale/lease proceeds from the project for the Regional Revolving Fund.

The consultant will examine and summarize the criteria outlined in the RFP. It is assumed that Tri-Met will provide information relating to ridership. In general, potential criteria could be grouped in categories relating to:

- Land use density and induced population
- Potential ridership
- Ease of implementation
- Financial consideration

The first step in developing a set of criteria would be to summarize what criteria are now being used by federal and state agencies. The second step would be to identify areas where criteria is lacking and to propose additional measures to fill the gaps.

The third step would be to test the criteria against greenfield and infill sites to determine if proposed measures are:

- Understandable
- Comprehensive
- Effective as a tool in judging the effectiveness of public investment in candidate TOD projects.

The fourth step would be to develop the product to be used by an agency when evaluating investment proposals. The product would include:

- A one page checklist summarizing evaluation criteria
- A two page attachment summarizing why the individual criteria are significant in evaluating investment proposals.

The product from this sub-task will be included in the Technical Memorandum for Task 1.

2) IMPLEMENTATION ENTITY

The second consultant report will examine options for an entity to carry out the public-private partnership for developing a TOD. The consultant will examine these options: a) a Development Commission under Metro, b) a formal consortium of Tri-Met, Metro, local governments, and regional interest groups, c) use of a private non-profit development corporation and, d) other. This report would conclude with a recommended course or action for an implementation entity. Estimated timeline for this report is 11 weeks from notice to proceed.

The consultant will prepare an interim Technical Memorandum defining each of the three main organizational concepts specified in the RFP. While there may be "other" concepts (and if they are identified they will be added to this Technical Memorandum), it is more likely that there will be a number of sub-options under the three main concepts. These sub-options will be defined in the interim Technical Memorandum as well. The Technical Memorandum will be subjected to the appropriate review and revised as necessary.

After agreement is reached on the definition of the alternative organizational concepts, they will be evaluated in terms of [a] their legal authorities, [b] ease of implementation, [c] effectiveness in participating in development activities, [e] political acceptability and other factors to be determined by the consultant or to be added by staff. The consultant will prepare an interim Technical Memorandum assessing each of the identified organizational concepts and sub-options. The Technical Memorandum will be subjected to the appropriate review and revised as necessary.

The Technical Memoranda will then be merged into an Implementation Report which will contain specific recommendations on the organizational concept and an action plan for how it should be implemented. The consultant will be available to present the Implementation Report to TMAC, TPAC, MPAC and/or JPACT, as appropriate.

3) TOD SITE SELECTION

The third paper will be a site selection analysis report. This paper will review optional sites for the best demonstration of a TOD project with a recommended course of action on one or more sites. The consultant will select three candidate greenfield sites - large sites adjacent to an existing or planned LRT station that could accommodate a significant TOD of more than 40 acres, and two smaller sites of approximately 5-10 acres each. In addition, a program for infill sites - smaller than 3 acres each - will be reviewed. The consultant will document the environmental consideration for the greenfield sites, to be certain the project can move forward to implementation. The criteria established by the fourth subtask of the first report will then be applied to these candidate sites to recommend a pilot program for one or more TOD projects. Estimated timeline for this report is 17 weeks from notice to proceed. This report will be submitted to JPACT before completing the appraisal report.

The consultant will use the draft criteria being identified in the first phase of this project as a tool to assist in the selection of the three candidate greenfield and two smaller sites. For each of the five candidate sites the opportunities and constraints will be identified in graphic form. In addition, concept TOD designs will be developed for each site to explore and illustrate development potential. Candidate sites will be evaluated using the finalized first phase criteria and one or more sites will be recommended for a TOD pilot program. The work in this phase will conclude with a site selection analysis report describing:

- Candidate Sites
- Opportunities and Constraints associated with sites
- Development potential for each site
- Projects for each site which could be significant in promoting TOD implementation
- An evaluation of how effective public investment could be in advancing TOD projects and the potential benefits to the region.
- Recommendations on a TOD pilot program

4) ACQUISITION APPRAISAL

The fourth report will be an acquisition appraisal report on the selected site(s) for budget purposes. The appraisal report will be specific enough to establish the land cost of a site to help evaluate a project, but is not of sufficient detail for federal acquisition requirements. If a project is recommended for funding, a more detailed appraisal will be conducted at that time. This appraisal work will be completed by a fully certified independent appraiser and will only be completed on those development sites that have been selected to TOD implementation. Estimated timeline for this task is 19 weeks from notice to proceed.

It appears that the appraisal requirements for this project are fairly typical and can be met utilizing a standard ODOT format or a simple narrative reporting format. The scope of the appraisal process would include inspection of the property and its neighborhood, research and verification of comparable sales, analysis of the sales relative to the subject property, and presentation of a property description and the valuation analysis in a relatively brief appraisal report, with the potential requirement of a more detailed appraisal report at a later date. Any work submitted would be developed and the report prepared in conformity with the requirements of the code of Professional Ethics and Standards of Professional Practice of the Appraisal Institute and the Uniform Standards of Professional Appraisal Practice.

5) PROJECT COMPLETION

When the process is completed, the final steps are to: a) draft legal resolutions that will provide the institutional mechanism for the TOD Implementation Program for the selected sites, (Estimated timeline to complete this work is 20 weeks from notice to proceed.) b) present the findings and recommendation to the steering committee and be prepared for one public hearing if desired by the committee, and c) prepare the necessary reports as required with ODOT and others.

Each of the individual task reports will be merged into a Final Report, as required by Metro and ODOT. The consultant will prepare a draft resolution/ordinance for the Metro Council and, if appropriate, a prototypical companion resolution for affected local governments, which implements those portions of the final recommendation which are, in fact, implementable by a resolution/ordinance. To the extent there are further actions that may be necessary, the resolution/ordinance will specify an action plan which accomplishes these actions (such as seeking legislative authorities, seeking provisions in the upcoming federal transportation authorization bill, establishing a non-profit, etc.).

The consultant will be available to present the Final Report and/or Resolution/Ordinance to TMAC, TPAC, MPAC and/or JPACT, as appropriate.

Note: The budget includes 10 meetings with the Steering Committee, TMAC, TPAC, MPAC, and/or JPACT, up to the hourly limit indicated below:

WORK TASK	FFA Hours			Consultants		Total
	GC	DA	Support	Siegel	Young	
0) NOTICE TO PROCEED Assistance in creating S.C.	1			2		3
1) POLICY FRAMEWORK ■ Role of Government ■ Implementing Tools ■ Sources of Funding ■ Criteria for Projects ■ Policy Report	15	40	4	151		210
2) IMPLEMENTATION ENTITY ■ METRO Development Commission ■ Agency/Interest Group Consortium ■ Private non-profit development corporation ■ Other ■ Implementation Report	10	8	4	57		79
3) TOD SITE SELECTION ■ Potential Sites ■ Evaluation of Sites ■ Recommended Site(s) ■ Recommended Pilot Program ■ Site Selection Report	40	168	40			248
4) ACQUISITION APPRAISAL ■ Selected Site(s) ■ Appraisal Report	4	4			48	56
5) PROJECT COMPLETION ■ Draft Resolutions ■ Presentation and Hearing ■ Final ODOT Report	17	40	16	20		93
Major Meetings (10)	30			30		60
TOTAL HOURS	117	260	64	260	48	749

